OREGON'S EXPERIENCE WITH MINIMUM WAGE LEGISLATION

BY

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Assistant Professor of Economics
University of Oregon

SUBMITTED IN PARTIAL FULFILMENT OF THE REQUIREMENTS
FOR THE DEGREE OF DOCTOR OF PHILOSOPHY
IN THE
FACULTY OF POLITICAL SCIENCE
COLUMBIA UNIVERSITY

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PREFACE

THE State of Oregon has shown considerable initiative in formulating and trying progressive legislation. In spite of the fact that its population is in many ways conservative it has given trial to direct legislation, workmen's compensation, mothers' pensions and similar welfare legislation. Such experiments cannot fail to be of interest to all who are possessed of a social consciousness. Yet even though one be not dominated by the concept of " welfare economics ", experiments such as this by the State of Oregon with minimum wage legislation prove interesting and significant simply as laboratory studies in the working of general economic theory.

Enough years have now elapsed, sufficiently varied in character, to make useful a careful survey of the concrete results of this type of legislation. This study, as its title indicates, attempts to analyze some problems of minimum wage legislation specifically in the light of Oregon's experience. The problems cannot be said to have originated in Oregon but the history of the application of the legislation to this state does throw light upon them. Interest centers in such an act because of its bearing upon human behavior. The author hopes that the study may not only help to reveal the significant changes wrought in human behavior by the Minimum Wage Law but may also through analysis and emphasis lead to further improvements in the way men act in economic society.

It is a pleasure to express my sincere appreciation to Professor Henry R. Seager for his interest in this work and for the encouragement and counsel which he gave to me while I

was studying at Columbia University. His assistance in revising and preparing the manuscript for publication has been an invaluable aid. I wish to acknowledge also the help of Professor E. R. A. Seligman, whose suggestions did much to stimulate my thinking. My obligation extends further to Professor James H. Gilbert of the University of Oregon who carefully read the manuscript and made many constructive suggestions and to Mrs. Millie R. Trumbull, Secretary of the Oregon Industrial Welfare Commission, who from her wide experience has given me insight into the operation of the law.

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CHAPTER I

History of Minimum Wage Legislation

Fifty years ago it would have been regarded as an unwarranted interference in private affairs for a government to intervene in the setting of a wage rate, although before the days of the reign of *laissez-faire* and in these days of its declining authority we find governments speaking on the matter of wages. To mention the royal proclamation of 1349, followed by the statute of laborers of 1351, is sufficient to illustrate the first of these periods of interference, and modern minimum wage laws and arbitration legislation present the recent attempts to give government a voice in determining industrial pay. The one was an attempt to set a maximum wage at the point of the wage level before the Black Death; the other is an attempt to set "minimum," "average," "proper," or "standard" rates, but by no means a rigid maximum. The first resulted from the employer's desire for a low wage level or from the public's fear of high prices because of high wages; the second reflects our growing consciousness of the inadequacy or injustice of the wages paid in certain trades and the evils resulting from sweat-shop conditions.

The attempts at wage regulation made through minimum wage laws and industrial conciliation and arbitration acts are confined approximately to the last quarter of a century, the first in point of time, the Industrial Conciliation and Arbitration Act of New Zealand, being passed on August 31, 1894. Really active trial, however, even in the Australasian section of the world can scarcely be said to have begun before 1900.

Two entirely separate and distinct evils gave rise to the attempts at government regulation of the wage rates. One of these was the sweat-shop evil; the other was stoppage of work and injury to the public through strikes and other forms of industrial conflict. The search for a solution to the first of these evils led to the Factories and Shops Acts, notably in Victoria, with wages boards; the search for the solution to the second led to the Industrial Conciliation and Arbitration Acts, notably of New Zealand and New South Wales, with industrial courts. While these two types of laws were quite distinct in origin and early provisions, in practice they have worked out almost to the same end.

New Zealand, as already stated, led the way. Her Industrial Conciliation and Arbitration Act of 1894, though often amended, has throughout been primarily an attempt to prevent strikes and lockouts. Briefly, the New Zealand law provides for the division of the dominion into eight districts, in each of which there is a Board of Conciliation, the eight districts being then combined under a Court of Arbitration for the dominion as a whole. In order to submit a dispute, employees must form an " industrial union ", dependence on organized labor thus becoming a part of the practice. This presents no special difficulty, however, as seven employees may form such a union. The disputes may be brought either before the Boards of Conciliation or directly to the Court, and the proceeding before either is judicial in form.

In reality this process constitutes legislation upon " industrial matters ". After a general definition in the law this term " industrial matters " is declared to include

(a) The wages, allowances, or remuneration of workers employed in any industry, or the prices paid or to be paid therein in respect of such employment. (b) The hours of employment, sex, age, qualification or status of workers, and the mode, terms and conditions of employment. (c) The employment of chil-

dren or young persons, or of any person or persons or class of persons, in any industry, or the dismissal of or refusal to employ any particular person or persons or class of persons therein. (d) The claim of members of an industrial union of employers to preference of service from employed members of an industrial union of workers. (e) The claim of members of industrial unions of workers to be employed in preference to non-members. (f) Any established custom or usage of any industry, either generally or in the particular district affected. "Industry" means any business, trade, manufacture, undertaking, calling or employment in which workers are employed.[1]

The scope of the act thus not only strives to meet strikes and lockouts regardless of cause, but provides means for eliminating low wages, long hours and unsanitary conditions, the three primary evils of the sweat-shop trades.

An industrial arbitration court system has been adopted also in Western Australia (the court being given the function also of a wages board since 1925) and for the Australian Commonwealth as a whole. On the other hand a wages board system primarily aimed at the sweating evil was adopted in Victoria and Tasmania, while in New South Wales, in Queensland since 1912, and in South Australia since 1912 the two systems have been combined.

Under the wages-board plan as found in Victoria[2] joint boards of employers and employees are appointed from the nominees of the employers and employees. These joint boards consist of not less than four nor more than ten members equally divided between employers and employees and a chairman outside this number appointed by the gover-

[1] Portion of Section 2 of New Zealand Industrial Conciliation and Arbitration Act, 1918. See *Bulletin of the U. S. Bureau of Labor Statistics*, whole no. 167, p. 259.

[2] Factories and Shops Act. 1912. Victoria. See *Bulletin of the U. S. Bureau of Labor Statistics*, whole no. 167, pp. 216-233.

nor in council upon nomination by the members of the board, or, in case of failure to nominate, upon recommendation of the minister of labor. These wages boards proceed to establish through collective bargaining the conditions of work and then the award or determination may be made binding upon all the trade throughout the colony and this award is enforced by the factory department in the same manner as any other labor regulation of the colony. An appeal may be taken from the decisions of these joint boards to an "industrial court," consisting of a judge of the Supreme Court and a representative each of employers and employees, this court being appointed from time to time as required for the special cases. Its decisions are final.

The field for hearings and determinations is large, including wages, hours, overtime and apprenticeship provisions. It is specified that in fixing lowest prices or rates

> the special board shall take into consideration the following matters and may (if it thinks fit) fix different prices or rates accordingly: (1) The nature, kind and class of work; (2) The mode and manner in which the work is to be done; (3) The age and sex of the worker; (4) The place or locality where the work is to be done; (5) The hour of the day or night when the work is to be done; (6) Whether more than six consecutive days' work is to be done; (7) Whether the work is casual as defined by the board; (8) Any recognized usage or custom in the manner of carrying out the work; (9) Any matter whatsoever which may from time to time be prescribed.[1]

It is evident from this statement of the scope of the law that a direct blow could be struck at the sweating evil, as was intended by the act. In its initial form the act was limited in application to six trades in which the sweat-shop evils were most prominent but it has since been greatly extended,

[1] Victoria Factories and Shops Act, 1912. Portion of Section 141.

to any trade upon a simple enabling act by either house of parliament. In practice, then, the law has broadened out into a general minimum wage law, attempting to systematize collective bargaining in a wide range of trades.

What has been true in New Zealand and Victoria has largely been true in the other states as well, and it may be said that today general legislation providing some process of determining "minimum" wages is to be found in all sections of the Australian Commonwealth.

The early accomplishments of this legislation in Australasia may best be told in the words of the Australians themselves. The Hon. Bernhard R. Wise, formerly attorney-general of New South Wales, in his book *The Commonwealth of Australia,* after pointing out the essential differences between the arbitration-court and wages-board plans, says:

> Both systems, by the use of the minimum wage, have put an end to sweating. Each system tends, too, to preserve industrial peace by offering an alternative remedy to industrial war. But industrial courts owing to the greater thoroughness of their investigations have probably a greater educational influence upon public opinion, which is final arbiter in industrial conflicts. The procedure of a court is also better adapted to elicit evidence.
>
> On the other hand, a wages board may have some superiority over an industrial court in that its members have a practical knowledge of matters involved. But against this must be set the very real advantage of a judicial training.[1]

Again he says:

> It is said that no system for regulating wages will be successful in a falling market. That during the period of the Australasian experiments wages have been upon the up-grade is certainly true and must be allowed for in judging their value; but those who have had experience in administering the wages including now nearly all trades, and it may be made to apply

[1] Wise, *The Commonwealth of Australia,* p. 321.

boards and arbitration courts are not prepared to accept the statement that either system will break down when economic conditions change.[1]

In the light of this last statement made in 1913 it is interesting to read the following from the Hon. Sir Charles G. Wade, K.C., agent-general for New South Wales and late premier of that state, written in 1919:

> The general result of the work of these tribunals (arbitration courts and wage boards) in Australia has been an increase in wages or shortening of hours, but naturally with the higher wage and increased price for materials the cost of all production has been greatly inflated. The employer invariably passes on to the public the increased cost so incurred, and the worker finds that he, as one of the customers, is called upon from his increased wage to meet a much heavier bill for food, housing and clothing. Then in turn the workers claim further increases to meet the higher cost of living. Any added cost is then again passed on to the public and the industrial world travels in a vicious circle until a point is reached at which it is not practicable to increase wages any more. The trade unions in Australia, apparently having reached this stage, put forward a new proposal—that whilst they should be allowed to retain their extra wages and shortened hours, some limit should be placed upon the ever-rising cost of living and production generally, and the governments were called upon to fix a maximum price for all those commodities which play a part in maintaining a house-hold. This novel policy was put to a practical test for the first time in Australia just at the outbreak of the war, but the results were not encouraging.[2]

A royal Commission was appointed by Premier Hughes in 1919 to study the problem of the basis for the wage.[3] After

[1] Wise, *The Commonwealth of Australia*, p. 323.

[2] Wade, *Australia, Problems and Prospects*, pp. 37, 38.

[3] *Monthly Labor Review*, April, 1921, pp. 80, 81. Taken from *New Zealand Employers' Federation Industrial Bulletin*, January 6, 1921.

a long and intensive investigation a report was rendered in which "a bomb-shell was dropped into the wages arena." The amount arrived at as necessary for a family of five was vastly higher than any former decisions. The sum in fact when multiplied by the number of laborers was estimated to amount to more than the entire annual income of Australia. This, then, has given rise to a new problem in the solution of which a careful study must now be made of the total wealth production of the continent. A possible way out of the difficulty was indicated in the suggestion of the endowment of all children by the state, through which endowment a man's income would in the aggregate vary with the size of the family, but the basic wage paid by the employer would be the same to all workers. Wages as paid by the employer would thus be below the minimum for a family of five but actual income including the state endowment would meet this minimum family level.

Since the downward trend of prices set in there have been a number of reductions in the basic wages in various sections of Australasia,[1] with the result that wage legislation has been facing an uphill pull. Though strikes have been rather numerous and dissatisfaction with the decisions has been frequent on the part of both employers and employees, nevertheless, the legislation cannot be said to have completely broken down. It is undergoing a serious period of testing and the industrial world is watching with interest the way in which this legislation weathers the economic storm.

Some indication of the continuing strength of the legislation is seen in the remarkable success of the Labor Party in the Australian election of October 12, 1929. With the main issue centering around the proposal of the Bruce ministry to abolish the federal systems of arbitration and con-

[1] Reported by U. S. Bureau of Labor Statistics in *Monthly Labor Review.*

ciliation and to hand these functions over to the various states, the Labor Party won what may rightly be called a sweeping victory, not only achieving a clear majority in the new House but even winning the seat of former Premier Bruce himself. While other factors played their part in the election there can be no question that the verdict at the polls demonstrates that public opinion in Australia strongly supports legislation by means of which the government fixes minimum standards for the protection of the lower-paid groups of wage earners. Thus far the legislation seems to have weathered the storm successfully.

Active interest in the low wage problem began in Great Britain with the appointment of the House of Lords' Commission on Sweating, which commission reported to Parliament in 1889, but it was not till 1909 that the mother country followed the lead of the colonies and passed the Trade Boards Act which went into effect January 1, 1910. The act as passed applied to four trades, selected because especially subject to the sweating evils, and authorized the minister of labor to extend it to trades in which the wages paid "are exceptionally low". This power was still further extended by the amendment of 1918 to include also those in which the minister of labor is "of the opinion that no adequate machinery exists for the effective regulation of wages throughout the trade". As a result of these and other provisions there were included under the act four more trades in 1913, seven more in 1918, fifteen in 1919, thirty-one in 1920, but only two in 1921. Readjustments since 1921 leave the law applying to some forty trades and covering one and a quarter million workers or more.

Great Britain followed the Victorian system of wages boards in providing the necessary administrative machinery, separate boards being set up for the individual trades and rendering their decisions only for the trade for which estab-

lished. A special discussion of the boards and their activities is here unnecessary. Their work has been moderately satisfactory, and even those who protest the law insist there must be no return to the days of sweating. In the name of "economy" a drastic cut has been made in the boards' activities and in the extension of the law to new trades. In fact, "economy" has brought a reduction in the number of trades included and a recession in the number of inspectors provided.

In 1923 a report on the working and effect of the Trade Boards Act was rendered by the Cave Committee appointed by Parliament to conduct the survey. The personnel of the Committee included no one of practical experience in the procedure of the trade boards and was certainly not especially favorable to them, yet their report is "on the whole, a vindication". The Committee in its report said, "Trade Boards have succeeded in abolishing the grosser forms of underpayment and regularizing wage conditions in the trades brought under the Acts." [1] The Committee did, however, criticize the extension of the scope of the law made by the amendment of 1918 and recommended that Trade Boards should be established only in those cases where *both* "the rate of wages prevailing is exceptionally low" *and* "no adequate machinery exists for the effective regulation of the wages." [2]

America has followed the lead of other Anglo-Saxon countries in the passage of minimum wage laws, but with the emphasis thrown entirely upon the problem of wages of women and minors. This limitation to female workers and minors was chiefly the result of the conviction that any

[1] *Report to the Minister of Labor of the Committee Appointed to Enquire into the Working and Effects of the Trade Boards Act*, London, April, 1922, p. 23.

[2] *Ibid.*, p. 27.

measure applying to men also would almost certainly be unable to withstand attack in the courts. In general, the conditions which called for legislation in Australia and Great Britain were the causes of the movement here, namely, the evils connected with sweated trades, broadening into the evils of low wages in any trade. The public welfare was seen to be intimately connected with the payment of an adequate wage to women and the securing of good working conditions and reasonable hours for both women and children.

The American movement centers at two dates, 1913 and 1919, the separation being due to the war, which shifted the emphasis of state legislation away from labor legislation. The American states and provinces adopting minimum wage laws and the dates thereof are as follows:

TABLE 1. DATES OF PASSAGE OF AMERICAN MINIMUM WAGE LAWS (U. S. and Canada)

State or Province	Date	State or Province	Date
Massachusetts	1912	Arizona	1917
California	1913	Alberta	1917
Colorado[1]	1913	District of Columbia	1918
Minnesota	1913	British Columbia	1918
Nebraska[2]	1913	Manitoba	1918
Oregon	1913	North Dakota	1919
Utah	1913	Porto Rico	1919
Washington	1913	Quebec	1919
Wisconsin	1913	Saskatchewan	1919
none	1914	Texas[3]	1919
Arkansas	1915	Ontario	1920
Kansas	1915	Nova Scotia	1920
none	1916	South Dakota	1923

American laws have almost uniformly been wide in scope, covering generally hours, wages and conditions of labor for

[1] Passed but not in operation.

[2] Repealed in 1919.

[3] Repealed in 1921.

both women and minors. They have been of three types. First, those in which the definite minimum wage rate is fixed by the state legislature, as in Utah and Arizona. Second, those in which the rates are set by a commission after hearings and recommendations of conferences and the decision enforced simply by the power of public opinion; e.g., Massachusetts. Third, as in Oregon, those in which the wage rates are determined as in Massachusetts but the commission is given actual power of enforcement.

The history of the operation of the laws in the United States would be some sixteen separate histories and cannot here be given, but it will be found more or less typified by the experience under the Oregon law.

The above-mentioned legislation constitutes the leading development in minimum wage acts, though beginnings are being made in other portions of the world. Germany and France, for example, each have acts which are confined, however, to homeworkers, as are the acts in most other countries. Fundamental growth of this type of social legislation is clearly occurring largely in Anglo-Saxon countries, and even there chiefly within the British Commonwealth of Nations.

CHAPTER II

The Content of the Oregon Law

The Oregon law began in research work, being one of the earliest attempts to apply to social problems scientific methods of study. In August, 1912, a Social Survey Committee which had been appointed by the Consumers' League of Oregon began an investigation into the conditions of work, wages and living conditions among women in the State of Oregon, with the view of presenting to the state legislature a bill for the regulation and control of wages of women in industry if such should prove desirable. The investigation was conducted by a trained worker and staff, and data were secured in the city of Portland upon the conditions of 7,603 workers, reliable wage data being secured from 4,523 of this number. In other cities of the state information was obtained for 1,133 women workers. From the data secured by this careful study the Committee, after commenting upon the fact that there were apparently no common standards of wages, gave the following conclusion:

> The wages paid to women workers in most occupations are miserably inadequate to meet the cost of living at the lowest standards consistent with the maintenance of the health and morals of the workers. Nearly three-fifths of the women employed in industries in Portland receive less than $10.00 a week, which is the minimum weekly wage that ought to be offered to any self-supporting woman wage earner in this city.
>
> The present conditions of labor for women in many industries are shown by this report to be gravely detrimental to their health; and since most women wage earners are potential moth-

ers, the future health of the race is menaced by these unsanitary conditions.[1]

As a result of the facts presented in the report of the Social Survey Committee a minimum wage law was drafted which received much careful discussion in advance of its submission to the legislature. As a result of this preliminary debate and of such revisions of proposals as were necessary to meet the most serious objections the opposition was brought into line, and the act passed the 1913 session of the legislature without serious difficulty and was filed with the Secretary of State on February 17, 1913.[2] Soon thereafter the governor made his appointments to the Commission authorized and the first ruling went into effect October 4, 1913.

By title and preamble the law is distinctly made a welfare act. "An Act to protect the lives and health and morals of women and minor workers." This emphasis on welfare, the protection of lives, health and morals, reflects without doubt the bad conditions actually unearthed in the survey conducted by the Consumers' League of Oregon, and parallels closely the original purposes of the minimum wage laws of Australia and Great Britain, which laws were aimed primarily at the trades where the evils of sweating existed in their worst form. It is noteworthy, too, that it was upon this ground that the law was able to stand the tests of constitutionality in the lower courts.

The law is wide in scope, not being adequately described as a minimum wage law. Wages, hours and conditions of work are all legislated upon and four distinct standards pro-

[1] *Report of the Social Survey Committee of the Consumers' League of Oregon on the Wages, Hours and Conditions of Work and Cost and Standard of Living of Women Wage Earners in Oregon with Special Reference to Portland*, January, 1913, p. 6.

[2] Chapter 62, General Laws of Oregon for 1913.

vided for by declaring four things unlawful; namely, (1) to employ women or minors in any occupation within the State of Oregon for unreasonably long hours; (2) to employ women or minors under such conditions or surroundings, sanitary or otherwise, as may be detrimental to their health or morals; (3) to employ women for wages which are inadequate to supply the necessary cost of living and to maintain them in health; (4) to employ minors for unreasonably low wages. A comparison of these standards with those set up in other places, such as Australia and Great Britain, reveals two vital differences. In Great Britain and Australia the legislation is applicable to men, women and minors; in Oregon, to women and minors only. In this respect Canadian laws have followed the practice of the United States rather than of England, except that in British Columbia since 1925 the act has applied to men as well as women and in Alberta, while the minimum is computed on the basis of the needs of women wage earners, it is provided that a man shall not be paid less than the legal minimum provided for women. A second difference is especially noted when comparing the Oregon legislation with the British. The British Act is distinctly a wage law, regulations as to hours and working conditions being in the general factory laws, whereas the Oregon law puts control over hours and conditions of work in the hands of the commission charged with the enforcement of the Minimum Wage Law.

After declaring the standards aimed at, the Oregon law provides the adminstrative machinery in the form of an Industrial Welfare Commission consisting of three members appointed by the governor of the state for a term of three years each, one member retiring January first of each year or at such a time thereafter as his successor may be appointed. The appointments must, so far as practicable, be made so as to have one member represent the employers, one the em-

ployees, and one who is impartial to work for the best interests of the public as a whole.

Extensive powers are granted to this Commission, including directions that they shall ascertain and declare the four following standards (Section 4):

(a) Standards of hours of employment for women or for minors and what are unreasonably long hours for women or for minors in any occupation within the State of Oregon; (b) standards of conditions of labor for women or for minors in any occupation within the State of Oregon and what surroundings or conditions—sanitary or otherwise—are detrimental to the health or morals of women or of minors in any such occupation; (c) standards of minimum wages for women in any occupation within the State of Oregon and what wages are inadequate to supply the necessary cost of living to any such women workers and to maintain them in good health; and (d) standards of minimum wages for minors in any occupation within the State of Oregon, and what wages are unreasonably low for any such minor workers.

It will be noted that there is a decided difference in the basis provided for standards of wages of women and of minors. In ascertaining actual conditions, hours or wages the Commission is armed with the authority to inspect all books, payrolls and records of any and all employers which may have a bearing on the case, and may require from any employer " full and true statements " as to wages, hours or conditions in his establishment.

In addition to this personal investigation, public hearings are provided for, at which any person interested in matters under investigation may appear and testify. To the Commission also is given the power to subpoena and compel attendance of any witnesses desired and to administer an oath to those testifying.

The procedure thus far is preliminary and is designed to furnish the Commission with facts justifying more complete consideration of future wages, hours and conditions. The next step is thus stated in Section 8 of the law:

> If, after investigation, said Commission is of opinion that any substantial number of women workers in any occupation are working for unreasonably long hours or are working under surroundings or conditions detrimental to their health or morals or are receiving wages inadequate to supply them with the necessary cost of living and maintain them in health, said Commission may call and convene a conference for the purpose and with the powers of considering and inquiring into and reporting on the subject investigated by said Commission and submitted by it to such conference.

This conference consists of not more than three representatives of the employers concerned, an equal number of representatives of the employees concerned, not more than three impartial persons representing the public and one or more of the Commissioners. All these members and the chairman are to be designated by the Commission itself. After the appointment of any conference the Commission must lay before it all information and evidence previously obtained in the investigations bearing on the case in hand and shall bring before it any witnesses whose testimony the Commission deems material. After full consideration of relevant matter the conference is instructed to report back to the Commission its findings and recommendations as to hours, wages and conditions of work for women. Regarding wages the conference may recommend both time rates and piece rates and may specify separate time rates for learners and apprentices and set the length of time they may be employed at such special rates.

The findings of any conference are then considered by the

Commission and any or all of the recommendations may be either approved or rejected. If rejected they may be submitted again either to the same conference or to a new one. If the Commission approves of any of the recommendations it must give notice of a public meeting at which any in favor of or opposed to the recommendations may have a hearing. If after this hearing the Commission still approves, it renders an order for the carrying out of the recommendations, which order goes into effect sixty days after it is rendered. So far as practicable the Commission must mail the order to every employer affected by it and the order must be posted in the establishments legally affected thereby.

Two other powers are granted to the Commission. In case a woman is " physically defective or crippled by age or otherwise " a special license may be issued to her permitting her to work at a rate lower than the minimum, this lower rate to be definitely specified in the license. This power to grant a permit applies only where nothing but time rates have been ordered for the trade. The second special power relates to minors, for whom the Commission determines suitable wages, hours and conditions, independently of any conference. The hours for both women and minors are especially protected by provision that no *more* can be allowed than those prescribed by law as a maximum.

The breadth of the act is seen in the definition of " occupation " given in the law. " The word ' occupation ' as used in this act shall include any and every vocation and pursuit and trade and industry." Variety in orders to meet varying conditions is allowed, for inquiries and orders may be made for any part of any trade and may vary in different localities. The attempt is thus made to meet actual conditions and to do full justice not only to the women but also to the industries.

Investigations are provided for from time to time to determine whether the orders are being obeyed, and other

state officers, the commissioner of labor statistics, inspector of factories, and the officers of the Child Labor Board, are directed to render such assistance as they can. The findings of the Commission as to facts are final and not subject to appeal, but any ruling may be appealed on a point of law. For violation of the act the penalty upon conviction is a fine of from twenty-five dollars to one hundred dollars or imprisonment for ten days to three months, or both. A similar fine is provided for any employer who shall intimidate or discriminate against any employee for testifying in connection with hearings and complaints. In case a woman has been paid less than the minimum prescribed by a ruling of the Commission the law specifies that she may recover by civil action the amount remaining due to her together with attorney's fees, a contract with her employer to the contrary notwithstanding.

CHAPTER III

Background of Business Conditions in the State of Oregon

Before turning to the legal and economic problems around which this study centers it is best to state briefly the general economic and business conditions which have existed in the state during the years of the minimum wage experiment. The economic environment has been an influential factor in the development of certain phases of the administration of the act. These peculiarities will be pointed out from time to time.

There are those who have thought that the trial of the minimum wage in Oregon was of little significance, regarding the state as a very unfavorable place for an industrial experiment. Several reasons may be suggested for this opinion. First: Oregon is by no means a large industrial state. The 1910 census taken shortly before the passage of the law gave the state a total of 672,765 inhabitants. By 1920 the figure had risen to 783,389. At the present time the number is probably still slightly below one million. Out of this population a considerable portion is clearly identified with agriculture rather than with commerce and manufacture, the fields most frequently associated with what we regard as an industrial state. It should be noted in this connection however that the drift to the urban centers is strong and that a rapid development of industry is taking place. In 1900 32.2 per cent of the population lived in cities and towns of over 2,500. By 1910 this had risen rapidly to 45.6 per cent, while by 1920 it had reached 49.9 per cent. Second: The industry which has in the past been most fundamental in Oregon's

economic life outside of agriculture, namely logging and lumbering, is not of a type to offer much employment to women and hence the state is not even as much of an "industrial state" for women as it is for men. Third: The state is large in area, so that the population is badly scattered, except for the measure of concentration in the Willamette Valley. Fourth: At least one of the large industries, fruit picking, packing, drying and canning, is subject to wide variations from season to season because of the uncertainties of climatic conditions. This makes careful planning and adjustments in an important field of women's work extremely difficult.

While the above facts might seem to make one hesitate to choose Oregon as the experimental ground for wage legislation there are good reasons for regarding the experiment here as an important one. First: While it is true that the population is scattered over a large area, it is also true that there tends to be a decided concentration in one large city, Portland, a city with a metropolitan area in which the population approximates three hundred and fifty thousand. Thus there is a genuine industrial center and the charge cannot be accurately made that the law is merely being tried under rural conditions. Real industrial problems are offered, among which are those surrounding women in industry. Second: The population is quite homogeneous, largely native born. This eliminates some of the difficulties which are occasionally present and no doubt has simplified somewhat the administrative perplexities. Third: While the state is subject to keen competition in some lines from California and Washington and thus the importance of cooperation between the states can be studied, it is far from what might be the overwhelming competition of the great industrial states of the east not subject to minimum wage regulations. Fourth: The citizens of Oregon have been quite favorably

disposed toward progressive legislation. Oregon led the way with the initiative, referendum and recall. Hour limitations, workmen's compensation, child labor restrictions, mothers' pensions and so on have been freely received. While direct legislation is not responsible for the Minimum Wage Law, since it was passed at a regular session of the state legislature, the friendly attitude of the state toward progressive legislation has made trial of the act much simpler. Conditions of public opinion were favorable.

For the foregoing reasons Oregon constituted a good place for such an experiment and her experience is worthy of study. Concentration in one metropolitan area, a homogeneous people, distance from overwhelming competition and favorable public opinion have all combined to reduce materially the enforcement problem and to make it possible for even a small staff with very modest financial support to accomplish results.

At least five factors were present during the period of years of minimum wage trial which disturbed the even course of economic events. They must be borne in mind during the study. First was the distinct depression during the earlier years, felt more in the west than in other sections as the west reacted more slowly to the stimulus of the European War. Second was the fevered period of the war, characterized by intense activity and rising prices. Third was the rapid movement of women into many lines of employment, induced especially by the withdrawal of men for war purposes and the need for increased production. Fourth was the reaction of business in 1921, felt somewhat less in Oregon than in the eastern sections of the country. Fifth, there was a reaction of attitude. Conservatism, quite extreme, had its day.

The accompanying tables, II and III, present a picture of the special conditions in Oregon during these years. First

should be noted the depression which gripped the state during the earliest years of the minimum wage determinations. 1914, the first year of the enforcement of wage rulings, is marked by declines in assessed valuations of property in the state, in total bank deposits and in total bank resources. The year saw also the high point in number of business failures, the high point in the per cent of business failures and one of the highest points in the liabilities of the concerns driven to bankruptcy. The entire state was experiencing business difficulty.

Since Portland is the largest industrial and business center and most concerned with the Minimum Wage Law, an inspection of such figures as are available for the city is needed. Here again marked declines took place in 1914 in certain

TABLE II. OREGON STATISTICS 1910-1925

Year	Assessed Valuation [1]	Bank Deposits [2]	Bank Resources [2]	Number of Failures [3]	Liabilities [3]	Per cent of Failures [3]
1910..	$844,887,708.74	$119,035,262.78	$147,518,528.07	173	$888,407	1.38
1911..	890,644,164.55	121,838,259.38	153,424,899.89	108	1,006,006	.77
1912..	905,011,679.00	125,680,905.96	159,876,500.42	272	2,389,236	1.75
1913..	954,282,374.09	132,796,823.77	169,462,838.55	379	4,192,034	2.34
1914..	932,413,080.00	117,714,333.98	164,822,634.74	489	6,945,756	2.99
1915..	934,495,032.25	126,201,784.53	164,481,127.14	393	3,628,234	2.39
1916..	878,763,944.71	164,620,864.38	204,365,342.51	360	4,243,438	2.23
1917..	928,605,570.36	198,993,268.29	241,475,469.03	318	5,530,602	1.98
1918..	987,533,896.97	226,412,036.06	282,086,256.82	200	3,220,010	1.30
1919..	990,435,472.17	306,358,276.04	361,895,366.51	130	1,742,827	.96
1920..	1,040,839,049.12	281,420,908.49	350,609,038.00	168	2,113,499	1.18
1921.	1,020,804,197.10	231,340,667.22	300,447,528.81	305	11,040,136	1.84
1922..	1,009,499,160.38	256,225,595.50	.....	403	5,021,459	2.40
1923..	1,042,410,618.66	274,091,633.98	.....	311	2,942,383	1.79
1924..	1,058,880,736.61	283,422,398.97	.....	393	4,055,770	2.10
1925..	929,483,911.20	293,164,577.14	.....	449	8,298,260	2.31

[1] Shown by the assessment rolls.

[2] State Bank Examiner's figures.

[3] Figures by R. G. Dun and Co.

TABLE III. STATISTICS OF PORTLAND, OREGON, 1910-1925

Year	Assessed Valuation [1]	Postal Receipts [2]	Building Construction [3]	Expenditures for Streets and Sewers [4]	Bank Deposits [5]	Bank Clearings [5]	Number of Business Failures [6]	Liabilities [6]	Per cent of Failures [6]
1910 ..	$274,266,035	$925,164.52	$20,886,202	$4,966,980	.....	$517,171,869	70	$377,888	1.84
1911 ..	296,199,230	1,004,428.71	19,943,187	7,577,652	$59,004,319.58	557,933,736	44	464,851	.91
1912 ..	308,975,220	1,108,474.46	14,652,071	3,709,483	58,812,437.27	597,092,896	153	1,618,826	2.81
1913 ..	314,105,777	1,183,535.78	13,656,890	3,510,937	59,648,637.23	627,818,010	194	2,995,066	3.26
1914 ..	307,918,080	1,233,479.93	6,746,261	1,880,587	55,649,824.93	578,884,018	264	5,382,481	4.73
1915 ..	303,006,010	1,167,293.03	3,887,610	928,086	60,060,128.21	554,446,756	192	2,271,865	3.40
1916 ..	285,125,840	1,220,487.89	6,301,360	781,035	65,576,894.14	649,775,145	166	3,147,753	3.07
1917 ..	284,819,955	1,327,979.70	3,643,410	294,469	83,706,898.89	868,331,220	158	4,044,798	2.69
1918 ..	305,200,640	1,639,958.06	6,176,052	529,328	106,685,238.88	1,323,082,798	97	1,966,444	1.73
1919 ..	312,671,785	1,721,360.01	9,840,725	276,422	141,401,670.02	1,652,950,830	49	706,808	.85
1920 ..	314,127,565	1,940,000.00	12,088,505	2,363,251	131,339,239.37	1,906,796,901	70	2,774,167	1.13
1921 ..	300,044,715	2,062,608.49	17,220,576	3,710,774	110,087,763.02	1,528,445,024	123	5,451,440	1.76
1922 ..	295,925,345	2,314,084.28	22,734,600	.....	120,510,569.82	1,600,507,594	162	4,511,251	2.22
1923 ..	304,253,760	2,581,718.98	25,247,135	.....	148,381,997.99	1,871,946,159	146	1,302,902	1.87
1924 ..	309,470,855	2,763,375.21	29,219,425	.....	157,947,219.32	1,898,866,410	180	1,933,530	2.16
1925 ..	324,542,640	2,909,977.10	38,476,335	.....	163,412,722.84	2,015,148,908	191	5,309,716	2.25

[1] Shown by the assessment rolls.

[2] Postal reports.

[3] Data from Building Inspector.

[4] Data from street department.

[5] Data from Portland Clearing House.

[6] Figures by R. G. Dun and Co.

significant figures, namely, those for value of buildings erected, expenditures for street and sewer improvements, assessed valuations, bank deposits and bank clearings. The most significant figure here is probably that for bank clearings, the one which best reflects the decline in volume of business being done. This is the factor of most importance when considering the effect of an increased wage bill as a charge on industry. As in the case for the state as a whole, the figures for Portland showing number of business failures, their liabilities and the per cent they were of the total business concerns show marked increases.

The data included in these tables, II and III, justify us in saying that at the very time that the Minimum Wage Law was going into operation the state was entering a period of distinct depression. This is given a little added significance in view of the remarkable expansion which had taken place just prior to this period. The years from 1900 to 1910 were years of rapid growth in population, accompanied by an intensity of building activity which produced a decade of "good business" bordering on the "boom" type. The fevered condition of the war years, especially those during which we were active participants, is clearly indicated on the graphs and in the figures.[1] There are distorting elements here, such as the changes in the value of money, but attention is called to the fact that this does not disturb the first few years of the minimum wage experiment.

In summary it may be said that the Oregon Minimum Wage Law has been through four periods of economic life. First: Marked depression. Second: The abnormal war and post-war boom. Third: The collapse and difficulties beginning in 1921. Fourth: The period of the last few years, sometimes called "profitless prosperity", certainly very difficult to describe. The activity of the Industrial Welfare Commissions in issuing wage decrees is confined to the first three of these periods.

[1] *Cf.* pp. 32, 33, 125.

CHAPTER IV

The Question of Constitutionality

The legal cases involving the constitutionality of minimum wage legislation have been numerous and long drawn out. Beginning with the first Oregon cases in 1914 and continuing through to the Arkansas case in 1927, the legislation has run the gauntlet of many courts, numerous judges, and much intelligent and unintelligent argument. Judges in state courts have with considerable unanimity upheld the acts. The Oregon law, after being upheld in the Oregon Courts in 1914,[1] met an equally divided United States Supreme Court in 1917.[2] In 1923 the United States Supreme Court dealt the death blow to the District of Columbia act,[3] and though this did not directly invalidate the state laws, it was a foregone conclusion that the same arguments and predispositions that overthrew the District of Columbia act would declare the state laws unconstitutional the moment a state case arrived. This belief was confirmed by the Arkansas case of 1927.[4] Two facts give the Oregon law a place of special significance in this constitutionality struggle. First, the briefs prepared in behalf of the Oregon law by Mr. Louis D. Brandeis, Mr. Felix Frankfurter and others

[1] Stettler *v.* O'Hara, *et al.*, 69 Ore. 519; 139 Pac. 743. Also, Simpson *v.* O'Hara, *et al.*, 70 Ore. 261; 141 Pac. 158.

[2] Stettler *v.* O'Hara *et al.*, 243 U. S. 629. Also, Simpson *v.* O'Hara, *et al.*, 243 U. S. 629.

[3] Adkins *v.* The Children's Hospital, 261 U. S. 525.

[4] W. H. Donham, as Prosecuting Attorney, *et al. v.* West-Nelson Manufacturing Co., 273 U. S. 657. Decided, January 17, 1927.

blocked out in detail the entire range of supporting arguments. Second, the sustaining decisions in the Oregon cases are an excellent judicial answer to the specific legal issues raised. These two facts justify a careful study of the legal conflict surrounding the Oregon law.

When the first wage rulings were announced by the Oregon Industrial Welfare Commission two cases arose in which constitutional tests of the Oregon law were made. The first case, that of Stettler *v.* O'Hara, was brought by a paper-box manufacturer, and the second case, that of Simpson *v.* O'Hara, by an employee in Stettler's paper-box factory. These cases were first argued in the circuit court of Multnomah County, Oregon, and the law upheld, upon which they were appealed to the Supreme Court of the State of Oregon where a decision was rendered sustaining the opinion of the lower court.

Three distinct issues were raised before the state courts, the first two being answered in the decision in the Stettler case and the third in the Simpson case. The three issues are: First: Does the act rightly come within the police power of the state? Second: Is Stettler, the plaintiff manufacturer, deprived of property without due process of law? Third: Is the act in violation of the fourteenth amendment which forbids abridging the privileges and immunities of citizens of the United States, which privileges and immunities are interpreted as including freedom of contract?

In respect to the first issue, quoting authority,[1] the Oregon Supreme Court defines police power as follows:

> Police power is the name given to the inherent sovereignty which it is the right and duty of the government or its agents to exercise whenever public policy, in a broad sense, demands, for the benefit of society at large, regulations to guard its morals,

[1] Professor Tucker, in 8 Cyc. 863.

safety, health, order or to insure in any respect such economic conditions as an advancing civilization of a highly complex character requires.

After thus declaring the type of measure which may rightly be upheld under the police power the Court brings the Minimum Wage Law under it by accepting the concept of "common belief" as establishing the public necessity for the act. The Court said:

> A common belief, like common knowledge, does not require evidence to establish its existence but may be acted upon without proof by the legislature and the courts. The fact that the belief is not universal is not controlling as there is scarce any belief that is accepted by everyone.

Then the Court declares:

> "Common belief" and "common knowledge" are sufficient to make it palpable and beyond doubt that the employment of female labor as it has been conducted is highly detrimental to public morals and has a strong tendency to corrupt them.

The testimony of social workers, students of labor problems and of the Massachusetts commission on minimum wage boards is quoted as showing low wages actually existing and the evils attending. Conviction is expressed that women in general are working because of dire necessity and that many therefore are not in position to refuse underpayment. The Court then declares that in the light of this common belief in the existence of low wages and the evils related thereto it cannot be said that the minimum wage act is beyond all question a plain, palpable invasion of rights secured by the constitution and has no real or substantial relation to the protection of public health, morals or welfare. Every argument put forward to sustain the maximum hours law or upon which it was established the Court holds applies equally

in favor of the constitutionality of the Minimum Wage Law as also within the police power of the state and as a regulation tending to guard the public morals and the public welfare. The opinion of the Oregon Court should be contrasted with that of the United States Supreme Court as discussed below. The Oregon Court accepts the opinions of representative, reasonable people as a sign that a view may be rationally held. One wonders what would be required to convince the United States Supreme Court that a view contrary to that of the majority of the Court could rationally be held. Also, it should be noted that the Oregon Court is willing in determining police power to take cognizance of " such economic conditions as an advancing civilization of a highly complex character requires ". The majority opinion of the United States Supreme Court, while recognizing the new political status of women, seems to take no notice of the complex character of a new economic regime.

The plaintiff's contention that the law was void because it makes the findings of the Commission on all questions of fact conclusive and therefore takes his property without due process of law was also denied by the Oregon Supreme Court. After citing a number of cases, the Court declared:

> Due process of law merely requires such tribunals as are proper to deal with the subject in hand. Reasonable notice and a fair opportunity to be heard before some tribunal before it decides the issues are the essentials of due process of law.

It is unnecessary to introduce further quotations on this point of due process, but we should note the emphasis put by the decision upon reasonable notice and a fair opportunity to be heard. It is further a significant fact that in the dealings of Stettler and Simpson with the Oregon Industrial Welfare Commission not even the opportunities which the law afforded to be heard were taken advantage of by the

plaintiffs. Where a woman is incapable of earning the minimum the law makes possible a hearing relative to the granting of a permit to work at a wage below the legal minimum. Such a permit was never applied for by those who were parties to this hearing. The decision further points out from precedent that, even though the law gives no right of appeal from final findings of facts, a party aggrieved is not without remedy as to matters that would be the appropriate subject of judicial inquiry, namely, if the rates fixed are confiscatory. The Court closes this part of its decision in no uncertain language:

> It is sufficient for the protection of his constitutional rights if he has notice and is given an opportunity at some state of the proceeding to be heard.

The third point of attack on the law was brought under the first clause of the fourteenth amendment, which declares that "No State shall make or enact any law which shall abridge the privileges and immunities of citizens of the United States." In the case of Simpson *v.* O'Hara it was contended that this protection was violated since the Minimum Wage Law abridged the plantiff's freedom of contract. In the light of the evils of low wages and the detrimental effects which justify the use of police power it was held by the Court that freedom to contract for an unduly low wage was not a privilege of any citizen within the meaning of the fourteenth amendment. The words of the Court are:

> Having determined in the preceding case that the police power of the State legitimately extended to the right to prevent the employment of women and children for unreasonably long hours or at unreasonably small wages, and that the State had a right to use the machinery of a Commission to determine to the extent stated in the opinion the length of time and at what wages such persons might be employed, it would seem to follow as a

natural corollary that the right to labor for such hours and at such wages as would reasonably seem to be detrimental to the health or welfare of the community is not a privilege or immunity of any citizen.

Thus the Court held that any abridgment of the right of contract reasonably necessary to protect health and morals was not inconsistent with the constitution.

The Court took occasion to clear up the question as to the intent of the fourteenth amendment and its applicability to a case such as that brought by the plaintiff. A brief historical analysis was given in which it was pointed out that the guarantees of this amendment enacted after the Civil War were not new in American history but had existed substantially in the constitutions of many of the states, and, excepting as to the Negro, were practically universal in the United States. The introduction of these guarantees into the constitution in such a way as to make the federal government co-guarantor with the states was a move to provide better protection for a newly-enfranchised race. Then the Court applied this bit of history:

> That the effect of this would be to limit the power of the states to enact reasonable laws for the protection of their women and children against the consequences of labor for a length of time tending to impair health or at a wage barely sufficient to sustain life never entered the imagination of the statesmen who framed it.

The law was held therefore to be reasonable and not a curtailment of privileges or immunities in violation of the first clause of the fourteenth amendment.

Thus all three of the contentions advanced in the two cases challenging the constitutionality of the Minimum Wage Law were emphatically answered by the Oregon Supreme Court and the act declared to be entirely within the province

of the Oregon legislature. The arguments used in these decisions of the Oregon Supreme Court constituted the clearest and most forceful presentation of judicial opinion in favor of this type of legislation. In the light of the later adverse opinion of the United States Supreme Court in the District of Columbia case it is well to note that in this decision by the Oregon Court the social and economic philosophy of the judges is not injected into the opinion but their attention is confined to the legal problem of " police power," " due process," and " the fourteenth amendment guarantees".

After the Oregon decision was rendered upholding the law, a writ of error was taken to the Federal Court to review the case. The case was recognized as crucial, and eminent legal authorities were consulted. The case was argued during December, 1914, the brief on behalf of the State being submitted by Mr. Louis D. Brandeis. After the argument the personnel of the Court changed by the appointment of Mr. Brandeis as associate justice. A reargument was ordered, coming in January, 1917. The brief was this time submitted by Mr. Felix Frankfurter of the Harvard Law School. Mr. Brandeis was disqualified from sitting on the case because of previously acting as counsel. Of the remaining eight judges, four upheld and four opposed the Oregon measure.[1] Since it requires a majority of the appellate court to reverse the decision of a lower court, the judgment of the Oregon Court was undisturbed; no opinion was announced, no statement given of judges favoring and opposing, and no precedent set for future decisions.

Though final judicial settlement was suspended by this fact of an equally divided court, this Oregon case was of outstanding importance in blocking out the sustaining arguments for minimum wage legislation. The later case in behalf of the District of Columbia act largely restated, brought up to

[1] Stettler *v.* O'Hara, *et al.*, 243 U. S. 629.

date and reinforced the arguments advanced in support of the Oregon law. This Oregon brief, therefore, deserves careful study as a precise analysis of the legal problems involved in all this type of legislation and is of moment not only to an Oregonian but even more to the wider public interested in minimum wage legislation.

Discerning examination of the adverse opinions rendered in the District of Columbia cases [1] suggests to any alert mind that they were in a high degree the product of a social and economic philosophy and not of constitutional analysis. One is convinced that the judges believed a minimum wage law to be economically and socially unwise, but one searches in vain to find convincing reasons why the experiment was beyond all rational doubt outside Congressional powers and hence "arbitrary," "wanton," and "spoliative". On the other hand the brief for the Oregon law, model for all later briefs, though including a mass of evidence bearing upon the social and economic phases, plunges directly into the legal theory and rests its case upon "the application of Marshall's canon of constitutional construction to the complicated and extensive facts of modern industrial life". Marshall's canon here referred to is: [2]

> Let the end be legitimate, let it be within the scope of the constitution, and all means which are appropriate, which are plainly adapted to the end, which are not prohibited, but consist with the letter and spirit of the constitution, are constitutional.
>
> (McCulloch *v.* Maryland, 4 Wheat., 316, 421.)

Ends, means, constitutional prohibitions; these are the three ingredients of this constitutional canon and upon these three rested the argument in the Oregon brief.

[1] Adkins *v.* The Children's Hospital, *et al.*, 261 U. S. 525. Also, Adkins *v.* The Children's Hospital, *et al.*, 284 Fed. 613.

[2] Brief for the Oregon law, 1916, p. A7.

Point I. "The end is legitimate and within the scope of the constitution."

Point II. "The means selected by Oregon 'are appropriate' and 'plainly adapted' to accomplish the legitimate end."

Point III. "No rights of the plaintiffs secured under the constitution of the United States prohibit the use of the means so adopted by the State of Oregon to accomplish these legitimate public ends."

Clearly the Oregon brief in no way dodges the vital issues; constitutionality, not merely social and economic philosophy, is argued.

"The ends" which the Oregon legislature sought to accomplish were ends unquestionably vital to the state; namely, health, morals, economic efficiency and "civilized maintenance of this generation and of the generations to follow". These legitimately desired ends were menaced, the argument claimed, by the fact that many women were receiving less in wage than it cost them to live. This perilous deficit the state sought to eliminate by the act in question requiring employers to pay experienced workers whom they chose to employ at least a minimum wage equal to a decent standard of living. A mass of evidence, statements from economists and social workers, findings of commissions, reports of labor bureaus and wage boards, experience in other Anglo-Saxon countries, was incorporated in the brief to show the reasonable, proper, even urgent nature of the ends in view.

With legitimate ends in view what of the means chosen? Were the means selected by Oregon "appropriate" and "plainly adapted" to accomplish the legitimate ends? Four alternatives, the brief held, were open to the Oregon legislature. (1) It could do nothing. (2) It could give the underpaid a direct subsidy. (3) It could use the Massa-

chusetts method and seek to compel the necessary payments by the power of public opinion. (4) It could compel the minimum wage except where special license was granted.

Oregon chose the last. Citing a long list of precedents the brief shows that legislative acts overthrown by the courts are those which convey power best described by such recurring adjectives as "arbitrary," "wanton," "spoliative" and "capricious". In other words, the spirit of the court judgments has been such as to uphold not only the means "plainly adapted" but those also "not plainly unadapted". The opinions of experts and the records of experience show the Minimum Wage Law to be a means "plainly adapted" and hence far inside that lower margin described as "arbitrary," "wanton" and "spoliative". Hence, Oregon had the full privilege of trying the means which were clearly reasonable and appropriate even "though the Court might think some other means would have a greater chance of effectiveness". It was not within the province of the Court to decide which means might be most effective; this was legislative power.

Its ends having been held to be legitimate and the means appropriate only one further consideration could stand between the act and clear, indisputable constitutionality. Did the act deprive the plaintiffs of any rights without due process of law?

It is granted outright that if every whim comes within the scope of liberty, then the act does curtail liberty, but so would every conceivable piece of legislation. The essential question is, are the liberties encroached upon clearly within the "rights" solemnly protected by the constitutional guarantees? Here the brief says, "No". The liberties of which the plaintiff in the Stettler case claims to have been deprived are not bona fide but consist merely in the liberty to employ $8.00 women for $8.00 rather than $8.64 women for $8.64.

The only possible alternative to this conclusion is that the real grievance he has in mind is that he cannot employ an $8.64 woman for $8.00, in which case the liberty he claims resolves itself into the liberty to pay an unfair wage. Neither of these alternative "liberties" comes within the solemn protection of the constitution. In the Simpson case the liberty curtailed resolves itself into liberty to have employment with Stettler. This likewise is not a bona-fide claim to sacred rights.

The alleged deprivations of property are either not bona fide as in the case of the so-called liberties or else are unsubstantiated as in the alleged damage to Stettler's business, of which damage Stettler offers no concrete evidence even though over three years of actual experience under the statute have taken place.

The brief therefore asserts that no genuine liberties or property rights worthy of sacred preservation under the constitutional guarantees have been dealt with wantonly, arbitrarily or as a spoliation.

Next, the brief advances several reasons why the action taken under the Minimum Wage Law is not arbitrary.

First, it is pointed out that there is a direct relation between the minimum cost of living and the product turned out during the hours of labor, and the brief asserts that it is not arbitrary and unreasonable for Stettler to be required to pay the cost of Simpson's labor since he chooses to use it. The State does not compel him to use Simpson's labor but merely to pay its cost if he does choose to use it. Even here, the brief points out, the law is not rigid for it gives Stettler the right to use the labor at less than cost if he can show the Commission a reasonable justification for the issue of a special license.

Next the right of the state to legislate on a minimum wage at the cost of living level is held to be entirely reason-

able and not " arbitrary " and " wanton " since wage contracts at the minimum are held to be not merely the concern of employer and employee but of " tri-partite " interest including the public as a vitally concerned party along with the preceding two.

Frankly recognizing the cutthroat competition which tends to develop between employers and also between employees the brief next holds that this type of legislation, requiring the consent of the Commission before a wage contract at a point below the living level can be entered into, is not " arbitrary " or " wanton " since it is a very reasonable means of preventing this disastrous competition not only between the employers but also between the employees. It is a reasonable protection of the efficient against ruinous competition. Closely connected with this point of ruinous competition the argument holds that a license from the Commission is entirely reasonable because of the " actual inherent inequality of bargaining power between the parties " and because it might minimize the danger of unfair and oppressive contracts.

Finally, entering a little into speculation as to economic consequences and offering upon the point a considerable amount of data, the brief holds that to require the consent of the Commission to wage contracts at below cost is a " reasonable exercise of the State's power to foster the productivity of industry ".

For these reasons the argument holds that the act is a reasonable exercise of power and in no sense at all an invasion of such sacred privileges or property rights as may warrant the prohibitive adjectives " arbitrary," " wanton," " spoliative " or " capricious ".

" Ends," " means," " constitutional prohibitions," these three elements of Marshall's canon of constitutionality are the three major lines of the Oregon argument. There is no dodging of the essential issues. The Oregon brief is ad-

dressed directly thereto. It constitutes a masterly presentation of the legal case for minimum wage legislation.

Two phases of the constitutional struggle remain to have a word said about them, the brief for the District of Columbia case and the decisions rendered thereon.

As previously stated the briefs submitted in these later cases largely restated and brought up to date the material included in the Oregon brief and added little to the constructive argument. In fact only two additional points are stressed, namely, the presumption to be accorded in favor of an act passed by the legislative branch of the government, and the rebuttal arguments to the majority decision rendered when the case was before the District Court of Appeals. Citations of precedents are included to emphasize the obligation of respect to be accorded to the judgment of Congress and the majority opinion is declared to erect notions of policy into constitutional prohibitions.

The two majority opinions [1] by which the District of Columbia act was overthrown have much in common. They are clearly discussions of social and economic philosophy rather than of legal theory. As the final sustaining brief declared, "The majority opinion of the Court of Appeals erects notions of policy into constitutional prohibitions." Aside from the citation of precedents to show the limitations tolerated upon freedom of contract the decisions really rest upon the following points which are clearly matters of social and economic rather than legal theory. First: The standard set for the minimum wage, namely, cost of living, is "so vague as to be impossible of practical application with any reasonable degree of accuracy". Second: This basis for the wage, while recognizing the employee's side of the contract, ignores the fact that the employer is entitled to effici-

[1] Adkins *v.* The Children's Hospital, *et al.*, 621 U. S. 525. Adkins *v.* The Children's Hospital, *et al.*, 284 Fed. 613.

ency in return. It takes cognizance of only one side in the contract. Third: It causes the employer to make payment on a basis bearing no relation to the facts of the employment. Fourth: Near the close of its decision the Supreme Court points out that there has been no opportunity for a real test of the economic value of the law. Finally, by way of warning to labor, as though to make the decision seem favorable to the employee, the opinion declares that the power to fix a high wage connotes the power to fix a low wage and therefore is dangerous. None of these points here cited which form the bulk of the majority opinion is, strictly speaking, on legal theory but is clearly a matter of social and economic philosophy and as such was really not before the Court for analysis. It is hoped that the following discussion of Oregon's fifteen years of experience will throw some light upon the social and economic philosophy involved in these decisions.

Finally, it is hard to avoid the conclusion that these adverse majority opinions deal with certain broad generalizations where they should have considered the specific piece of legislation before the Courts. The following are outstanding examples of the abstractions dealt with in spite of the fact that a very definite act was at stake. (1) The general power of Congress to fix wages was denied whereas a definite minimum wage for a particular class of employees was the issue. (2) The political equality of women was brought into the case though it has no bearing upon the particular issue of a minimum wage. (3) The generalization is also made that the power to fix the wage implies the power to fix prices of the commodities entering into the cost of living. No such issue was at stake. The Court of Appeals even went so far as to declare that the act itself was a price-fixing act. Thus did the decisions miss, it would seem, the specific, definite points at issue and lose themselves in broad generaliza-

tions which are of interest and importance for discussion but which do not decide the constitutionality of the particular minimum wage act in question. In contrast with the adverse majority opinion of the United States Supreme Court we have the two strong dissenting opinions, one written by Chief Justice Taft, the other by Justice Holmes. The dissenting opinions hold that the minimum wage laws do not go beyond the bounds set by reasonable construction of the police power; that the line cannot properly be so drawn as to include maximum hours but exclude minimum wages. Justice Holmes is particularly emphatic that the "criterion of constitutionality is not whether we believe the law to be for the public good." He follows this with a point, made also by the Oregon Court in connection with the Oregon cases, that, "We certainly cannot be prepared to deny that a reasonable man reasonably might have that belief (in minimum wage legislation) in view of the legislation of Great Britain, Victoria, and a number of states of this union."

The arguments advanced in the adverse decisions are disappointing as analyses of the legal theory involved in minimum wage legislation, but the basic brief offered in defense of the Oregon law blocks out the line of study which must yet be pursued before final conclusions are reached on constitutionality.

CHAPTER V

The Wage Setting Process

The administration of the Minimum Wage Law, even the drafting of the legislation, emphasizes the importance of the process of wage determination. It forces to the front the question, what is the basis upon which the wage rate for women has been determined and what is the relation of a minimum wage law to this basis? If the state minimum wage laws have accomplished nothing more in their brief history than to command intelligent study of the wage basis they have rendered a large service. The past largely took the rates for granted without much thought for their justification or explanation. Economists presented general wage theories but the explanation for actual wages, especially of women, was scarcely even brought under consideration. The following analysis will attempt to describe the principles underlying the determination of the rate of pay for women, to show the new elements introduced by minimum wage legislation, and to suggest what ought yet to be emphasized.

No one theory advanced by economists will explain wages, especially the wages of women. As there is no single theory adequate, so there is no uniform practice; it is infinitely varied and complex. Still, certain underlying conditions and tendencies may be recognized and deserve consideration in relation to the principles involved in minimum wage legislation. In explanation of wages some declare that they tend to be adjusted according to the productivity of the worker;

others, that cost of subsistence sets the level; some, that they result automatically from the conditions of supply and demand; others, that they merely reflect a bargain struck between employer and employee. The significance of the above theories in relation to women's wages and their truth or falsity can only be determined in the light of facts as to the rates of pay for women, and to the examination of these facts we must first turn. The order of study in this chapter will be, first, to present the actual conditions of wages of women; second, to examine these facts in the light of fundamental wage theory. This should indicate why conditions exist as they do and enable us to determine in the succeeding chapters whether the minimum wage legislation can be of any substantial assistance in improving conditions.

Let us turn first to certain known facts about the wages of women. What are the facts? (1) Their average is extremely low. (2) Within a single industry there is often little uniformity.

The knowledge of the unduly low wage commonly paid to women in industry and of the resulting hardships gave the impulse to the minimum wage movement. It was a matter of "common knowledge" that women received unduly low pay, and every study made in connection with the minimum wage movement has but confirmed this fact already accepted in "common knowledge".

In the survey conducted by the Consumers' League of Oregon preliminary to the presentation of the Minimum Wage Law before the state legislature, it was concluded from the statistics gathered from 5656 women wage earners that the least upon which the average girl could decently support herself was $10.00 per week, yet it was proved that over half were receiving less than this amount and that the average wage was only $8.20 per week. Wages as low as $1.50 per week were reported and many were found receiving less

than $6.00 per week.[1] Again, the survey reported states that

> Ten dollars is the maximum wage that the majority of clerks can hope to attain to. That this is a hope for the majority and a realization for a minority, is shown in the table which indicates that 1,211 women wage earners in department stores are earning under $10.00. The 867 who are earning $10.00 and over are made up of a few clerks, the highest paid office help and heads of departments.[2]

A second striking characteristic of women's wages, and one which has an important bearing on the question of how the actual rate has been set and whether or not a minimum wage law can improve conditions, is the entire lack of uniformity in rates paid among establishments. This diversity in rates paid occurs even where the character of the work done is essentially uniform, and where there are only slight variations in the efficiency of the workers employed. If rates were fairly uniform throughout a trade we should look to general conditions for an explanation of the factors determining the rate; with wide variations, however, among establishments within a single trade it is evident that something other than general conditions of the trade has been injected into the setting of the rate of pay.

In its report on conditions in Oregon, the Social Survey Committee of the Consumers' League declared as follows:

> Owing to the lack of organization among women workers and the secrecy with which their wage schedules are guarded, there are *absolutely no standards of wages among them.* A rule existing, written or unwritten, in all the larger stores, is that

[1] *Report of Social Survey Committee of the Consumers' League of Oregon*, 1913, pp. 20-22.

[2] *Report of Social Survey Committee of the Consumers' League of Oregon*, 1913, p. 25.

the girls must not tell others what wage they are getting. Divulging this information has resulted in instant dismissal. One firm goes so far as to require a signed promise from the girl that she will not tell any other employee her wage.[1]

The Survey Committee gives also the following statement still further emphasizing the lack of uniformity in practice or standardization of the amount of wages:

> One of the greatest complaints to be found with the large department store management is that as far as anyone can find out, they have no system of advancement of employees. Amount of sales, increase or decrease, is watched, to be sure, but apparently only to dismiss the employe if he or she does not come up to a certain standard. . . . The basis of advance seems to be personal aggressiveness, and this is testified to over and over again by the girls.[2]

The investigators found clerks being paid as low as $3.00 and $4.00 per week when the average wage was approximately $9.00 per week for such clerks.

These findings of facts as to actual wage conditions in Oregon are parallelled by the findings in many wage studies made in other states and in foreign countries both preceding the Oregon study and following it. For example, the following table given by the Massachusetts Minimum Wage Commission shows the lack of uniformity in the wages of women in the candy factories in Massachusetts:

[1] *Report of Social Survey Committee of the Consumers' League of Oregon*, 1913, p. 26.

[2] *Ibid.*, p. 26.

TABLE IV. WEEKLY RATES: BY ESTABLISHMENTS (CUMULATIVE)

Establishments	Per Cent of Workers with Weekly Rates of—						
	Under $4	Under $5	Under $6	Under $7	Under $8	Under $9	$9 and over
No. 1	..	9.7	43.4	70.5	87.8	93.3	6.7
No. 2	..	35.0	62.9	76.7	88.8	97.9	2.1
No. 3	..	21.7	42.0	57.3	73.2	92.9	7.1
No. 4	7.0	50.2	74.0	86.3	93.0	99.6	.4
No. 5	..	24.9	46.5	62.8	79.9	95.2	4.8
No. 6	3.4	39.1	56.2	71.9	88.5	100.0	..
No. 7	5.3	17.2	48.8	76.6	91.4	99.0	1.0
No. 8	..	32.5	63.6	83.1	93.5	98.7	1.3
No. 9	..	..	75.0	87.5	93.8	100.0	..
No. 10	..	56.4	74.5	85.5	90.9	90.9	9.1
No. 11	..	..	..	..	..	..	..
No. 12	..	..	..	..	8.3	83.3	16.7
No. 13	..	..	..	12.5	12.5	87.5	12.5
No. 14	..	..	..	..	..	14.3	85.7
Total	1.2	26.3	53.5	72.2	86.3	96.0	4.0

Note: Rates were not available for establishment No. 11.[1]

It will be noted in this table that whereas some of the establishments pay no one as low as $5.00 per week there are two which pay over 50 per cent of their employees under that amount. A study of the table reveals such an utter lack of uniformity as to make it convincing that the rate of compensation is not simply dependent upon the conditions within the trade itself. The studies of the Massachusetts Commission enable us to multiply the illustrations of this condition almost indefinitely. In the case of laundries, for example, there are establishments in which no woman earned less than $4.00 per week while in two less than $4.00 per week was earned by 42.4 and 46 per cent respectively.

The New York State Factory Investigating Commission

[1] Massachusetts Minimum Wage Commission, *Bulletin No. 4*, October, 1914, p. 32.

shows similar findings, as is indicated by the following distribution for saleswomen in two large department stores in Manhattan:

TABLE V. WAGE DISTRIBUTION OF SALESWOMEN

	Under $5.00	$5–$9.99	$10–$14.99	$15 and over
Establishment A.....	6%	85.2%	12.7%	1.6%
Establishment B.....	...	14.3%	43.9%	41.8%[1]

Blind, indeed, would we be if we could not see that there is no real uniformity in wage-payment policy. Different rates are evidently paid for identical services. These facts are extremely suggestive as to the direction in which to look to find the principles underlying the determination of the wage rate for women under conditions of individual bargaining.

These facts of the extremely low wage and the entire lack of standardization raise a question as to causes. These facts demand that we press the analysis of actual wage methods and of the theory underlying wage determination.

Several conditions surrounding women as wage earners challenge attention before considering the formal wage theories as related to women's wages. These conditions may be designated (1) social, (2) individual, (3) group and (4) trade or industrial.

Certain prejudices and traditions arising out of our social situations have exerted pressure sufficient to keep women out of many of the better paid lines of work and have tended to concentrate their supply of labor in the more or less unskilled trades. Needless to say, the active efforts of men in

[1] *Fourth Report of the New York State Factory Investigating Commission*, 1915, vol. ii, appendix iv, p. 72.

industry have often been exerted in the same direction. Traditionally, also, women have been regarded as industrially inferior to men, so that even for the same type and grade of work a lower pay would be tolerated for women than for men. Custom, urged on by prejudice and tradition, permitted the low pay of women workers to become firmly established.

Custom came to permit low pay and individual characteristics made the woman an easy victim. Often the woman is in reality comparatively inefficient. For work in many trades her physical limitations often prove a considerable handicap, and even when the actual operation of the machine does not require excessive physical exertion, the handling of quantities of raw material or the repair or care of the machine itself may place her at a disadvantage. A second decided handicap so far as productivity is concerned is found in the lack of training and skill often existing among women in industry. Tradition has often been responsible for this, no doubt, but more important probably is the fact that woman's industrial career is on the average extremely short; she is there for a short time previous to marriage. She is always a learner and as such her efficiency is low. Even as a learner she lacks any future industrial prospects as an incentive to rapid improvement or increased productivity. Again, the pressure of domestic duties outside of work hours is an additional drain on vitality, lowering efficiency for industry, and her greater irregularity of work due to sickness is also a consideration. A further individual factor conducive to the acceptance of a low wage is the fact that there is frequently relatively little incentive to resist it since often the woman is not necessarily her sole support and any deficit that may occur is made good by some other member of the family. The prospect of marriage weakens, too, any incentive to resist a low wage and leads to acquiescence simply

because the condition is regarded as temporary. The economic relation of the woman to the other members of the family makes her far less likely to press for a high wage than is the male worker. Economically the woman is much more likely to be tied to a particular place than is a man. As a labor force she is immobile and this often compels her to accept a low wage because it is all that is offered in the place. She cannot easily shift to the place where the wage rate might be better.

There is also a group reason for low wages. As groups men have combined into labor organizations and have succeeded in forcing higher wage levels, but women have been slow to adopt these group industrial activities. The number of women members in labor unions is small and the number of unions composed of women only is almost negligible. The reasons for this are discussed in a following section but the fact needs to be borne in mind here as a factor conducive to the low wage which is paid.

Finally, the trade conditions in the occupations where women work need a word of comment. For various reasons women have been crowded into the lower levels of trades. They are largely concentrated in the unskilled branches, which throws extremely heavy competition into what is even naturally a low wage level. It means overcrowding in the very lines where organization and resistance are least possible. Thus the very nature of the trades in which the vast mass of women workers labor places a heavy burden of competition upon the very ones least able to resist.

How, now, are the fundamental theories of wages related to the foregoing facts? Does productivity explain the wage paid? Does cost of subsistence set the level? Is it purely a matter of the play of the forces of supply and demand? Is it merely the result of a bargain struck between employer and employee?

Without doubt productivity sets the point above which wages will not rise and from the factors just mentioned that point will evidently be somewhat below the upper level for men. Woman's relative industrial inefficiency and the concentration of women wage earners in the unskilled trades must be taken into account. Still, the utter lack of standardization as revealed by the Social Survey in Oregon, confirmed in the figures given by the Massachusetts Industrial Welfare Commission and others, is a vigorous denial that wages of women conform to productivity. When women rendering almost identical services receive radically different compensation and when employers require secrecy as to the wage being paid it is evident that actual productivity or efficiency is not the basis of reward. Furthermore, the validity of the productivity theory of wages is admittedly dependent upon the existence of free and equal competition between employer and employee, and this cannot by any sweep of the imagination be held to exist in the case of large numbers of women workers and if non-existent in the case of large numbers must also be somewhat mildly existent in the case of others who must meet the potential competition of this lower group.

The comparison of the wage rates of women with the estimated cost of living for them made by the Oregon Consumers' League showed that the great majority were at this level or below it. This showing led some individuals to question the entire reliability of the survey because common sense seemed to say that the least the wage could possibly be was subsistence, *i.e.*, a minimum cost of living, since otherwise the woman could not remain in the occupation at all. This seems to be an obvious truth, yet further analysis and actual experience reveal that for some women workers the lowest possible level of wages even over a considerable period of time is not set by the cost of subsistence because

the difference between the cost of subsistence and the actual wage earned is frequently made up by other members of the family, by charity or otherwise, this contribution being in the nature of a subsidy, justifying the adjective " parasitic," sometimes used to describe the trades paying less than a subsistence wage.

A frequent explanation given for any wage rate is " supply and demand ". This is too easy a statement to make; standing simply in that form it means little. As so often used it carries the implication that the wage-setting process is automatic and operates on the basis of inflexible " economic laws ". To be of any real significance the " law of supply and demand " must have its respective elements analyzed. Recognizing the necessity for further interpretation of the terms, we may nevertheless say that without doubt the factors of supply and demand are a vital influence in setting the wage rate. The conditions previously stated which force a concentration of women in the unskilled trades and limit so seriously the fields open to them certainly oversupply those trades and result in grossly inadequate wages. But this does not by any means necessitate the conclusion that supply and demand rigidly prevent any higher wage. In proof of this note once more the widely differing wages paid by similar establishments within the same trade, employing women of essentially the same decree of efficiency. If supply and demand would justify a wage of over $6.00 per week to practically every worker in one establishment, it certainly would not dictate a wage less than that amount to over 50 per cent of the workers in a similar factory. Yet illustrations of such conditions can be multiplied many times over. With due qualifications and explanations we accept "supply and demand" as the factors setting commodity prices in a competitive market and in general these market prices on goods tend toward uniformity. Where the competitive

market does not exist " supply and demand " breaks down as the explanation of prices and the trend is not necessarily toward uniformity. In the case of labor, lack of publicity, lack of " price " quotations and immobility of the worker, together with other factors, result in conditions which can hardly be called a " market ". There is no " labor market " in the same sense that there is a competitive commodity market, hence the failure of the " price process " in the case of labor and the resulting wide variations noted in wages for identical service. Supply and demand, then, are factors in the determination of wage rates but not the exclusive factors, not automatic nor beyond the influence of human forces.

In actual practice the wage rate is ordinarily agreed upon in an individual bargain between the employer and the prospective employee, and the point at which the wage is placed must largely be dependent upon the human factors which enter into this bargaining process. If the qualities of the employers and the women as bargainers be regarded as factors on the side of demand and supply respectively, then the preceding theory of wages would have a large measure of truth in it. Only by introducing the variations in bargaining power can we adequately explain the wide variations in pay to women for identical work in different establishments. Practically all of the social, individual, group and trade conditions discussed as contributing to the low wage of women are vital factors in the weakness of their bargaining power.

Sidney and Beatrice Webb in their discussion of wages synthesize in a forceful way the varying theories by drawing together productivity, subsistence and bargaining.[1] Productivity sets the upper level above which general wages cannot rise for any considerable period of time. Subsistence sets the lower level beneath which general wages cannot sink

[1] Webb, *Industrial Democracy*. Part III on Trade Union Theory.

for any long period. This last statement, it will be remembered, has been qualified in the above discussion by showing how some women may for long periods be paid less than subsistence. Somewhere between these upper and lower levels the actual wage settles, the point of rest depending upon relative bargaining strength.

All theories as to the wage basis thus lead to the problems concerning the competitive bargaining strength of employers and employees. Theories and practice concentrate attention upon the subtleties of bargaining. Even a major item in the attack on the constitutionality of the Minimum Wage Law directs our thought to the bargaining process. The original brief against the Oregon law condemned it as abridging freedom of contract. To the facts about relative bargaining power when the women wage earners are left to compete independently and to the modifications resulting from the Minimum Wage Law the discussion of the following chapter is devoted.

CHAPTER VI

The Bargaining Process

The operation of the competitive society in which we live rests upon the bargaining process. Business leadership, types of enterprise, prices, conditions of work may be mentioned as samples of the multiplicity of conditions in economic life which are chosen by society through the bargaining process. The farther the analysis is pushed the more completely it must be recognized that competition is a matter of bargaining. Among these economic bargains not least in importance is the wage agreement, and a study of the Oregon experience with the minimum wage set by law may well begin with the analysis of the effect of the law upon the bargaining power of the women concerned.

For the average woman worker, indeed for all except a very limited group estimated at approximately one or two per cent of the women in industry,[1] the most vital things in life hinge upon the outcome of the wage bargain. This one or two per cent just mentioned are at work merely for "pin money", but the vast majority has a stake in the wage process far greater than "pin money". Discussions of the wage problem frequently leave the impression that it is simply a question of money; but the results of the wage agreement can never be adequately appreciated in terms of dollars, especially in the case of the low-paid women wage earners. It is extremely difficult for the well-to-do or even the fairly

[1] *Bulletin of the United States Bureau of Labor Statistics*, no. 182, 1916, table 17, p. 33.

prosperous middle class to have any genuine appreciation of the meaning of the dollar to a large portion of these women workers. The marginal utility of the goods purchased with the dollar of the low-paid worker is so entirely different from the marginal utility of the goods obtained with the middle class dollar that the real things at stake in the wage bargain are apt to be obscured.

It is not the things that may be purchased with "pin money" but the means of life and health itself that are the object of consideration. Of almost as much importance to a self-respecting human being as life and health are the other things which fashion and custom dictate must enter into the standard of living. Evidence gathered has shown that a large per cent of women in industry depend for their standard of living upon their own earnings and that in many cases they must maintain the standard not only for themselves but for others dependent upon them. With life, health and the other elements of a decent standard of living involved in the bargaining process we may wisely examine the effect of the Minimum Wage Law upon the strength of the women in the process.

In arriving at the wage agreement for women three alternative methods are open and the woman's strength as a bargainer is different in each. These alternatives are: first, individual, competitive bargaining; second, bargaining through the organization of women in unions; third, bargaining under the Minimum Wage Law through the Industrial Welfare Commission. What is the woman's relative position under each process? Which process gives the highest degree of equity to the interested parties?

The easiest course to take, that which requires the least initiative and thought, is simply to adopt the *laissez-faire* attitude of mind and allow each woman to make her own individual bargain with her employer. This requires the least

investigation of facts, the least collection, presentation and verification of data and necessitates the least interference with long-standing prejudices and vested interests. For the vast majority of women this has been the wage-determination method in the past. It is the method, however, which is based upon the assumption that there is always equality of bargaining power and this assumption is entirely unfounded. At every point that affects the relative competitive strength of the wage-earning woman and her prospective employer, the advantage is thrown heavily against the seeker after the job. That the employer's power is by far the more predominant is clearly indicated by the exceptionally low wage which the history of women in industry almost universally records. This first alternative, though the easiest, is manifestly inadequate and unjust. There can rarely be such a thing in the case of women's wages as a free and equal individual competitive bargain.

The general situation as to the organization of unions among women is well known and needs to be restated here only very briefly together with the reasons for the weakness of the unions. Such a restatement will be of value as preparatory for the discussion of the real change in bargaining strength resulting from the Oregon Minimum Wage Law.

Since the change in the position of the laborer wrought by the introduction of the machine age we have had a growth of organization among wage earners aiming to eliminate competition among themselves and to strengthen their position in the struggle with the employer. The attainment of any degree of strength has necessitated the development of collective action. While this has been highly successful in the case of many, it has left certain elements of the working-class group without any improvement in position. This has been strikingly true in the case of women. In some cases they have been haltingly admitted to the organizations of

men, in some cases gathered together into parallel organizations of women, but in the vast majority of cases they have been left almost untouched by the organized labor movement. In fact, the organization of labor and the restriction of entrance into trades has in many cases withdrawn the opportunities of trades from women and has thrown them in heavy numbers into certain of the less skilled and more unorganized lines of work. Thus competition has been intensified for them and their position as bargainers frequently actually weakened.

Even where the organization of women into unions has been attempted the situation has been found exceedingly discouraging and the results meager indeed. In these results Oregon's experience merely duplicates that to be found elsewhere.[1] There are in the state only a few unions of women, including only a small per cent of the women in industry. Within mixed labor organizations in the state there is also only a relatively small number of women members, which means that only a very limited number of women wage earners are identified with any labor organization. The State Federation of Labor reports show that not only is the number of women in unions relatively small but that the change in per cent of women members has been very insignificant. The problem of the woman's bargaining power has evidently not been met so far by means of unionization.

In the following statement of the reasons for the weakness of the union movement among women there is nothing new, but it is desirable to have in mind these elements of weakness in considering how the Minimum Wage Law strengthens bargaining power.

First, the majority of the women in industry are young,

[1] Based on facts shown in the Annual Reports of the Oregon State Federation of Labor and fragmentary data included in the Biennial Reports of the Bureau of Labor of the State of Oregon.

averaging much younger than men in industry.[1] Second, they are inexperienced partly because of their youth and partly because their appearance in the field of industry in large numbers is a comparatively recent development. It must not be overlooked also that traditionally women's interests have been elsewhere than in the field of competitive industry. Doubtless, however, a more fundamental reason for their weakness is the fact that their position in industry has been and still is frequently regarded as temporary. Wage-earning is a necessity from which release comes through marriage and to which misfortune may at a later time drive the woman but which is not regarded as the natural order of life. It must be noted that this is probably a slowly disappearing characteristic and that as modern life develops more completely women will become permanent factors in the laboring class. But up to date and doubtless for a considerable time to come the average woman will look upon her place in industry as temporary. While this attitude of mind exists what can induce the prolonged self-sacrifice necessary to effective organization of labor? Again, organization requires some degree, even if small, of financial strength and women represent the very lowest paid groups. When the wage is scarcely above the subsistence level even a small contribution for the support of a labor organization becomes an impossible sacrifice, to say nothing of the accumulation of a fund for strike or resistance purposes. Closely related to the preceding point is the fifth consideration, the nature of their trades. In general, it may be said that women have been crowded in large numbers into the less skilled lines of work. The reasons for this are many, not least of which has been the opposition of organized labor and tradition to the entrance of women into skilled occupations.

[1] United States Department of Labor. *Bulletin of the Women's Bureau, No. 46*, 1925, "Facts about Working Women," p. 27.

Competition for men has been lessened in these upper groups but for women it has been much intensified on the lower levels of skill. Even among men the unskilled, overcrowded trades have been exceedingly difficult to organize effectively. What wonder then that this field of women's work has remained violently competitive!

Finally, the opposition of employers to unionization of women workers is a deterrent. Most women are in industry by force of necessity; their jobs are vital to them. The woman is ever in a precarious position, for in her unskilled, overcrowded field some one to take her place is never hard to find; the least word on the part of employers is often fully sufficient to keep a woman out of any organization.

This second alternative, bargaining through the organization of women into unions, has therefore thus far been almost futile. Increasing power may develop in the years to come but for immediate conditions some other means must be sought.

Under the Minimum Wage Law of Oregon a third alternative for arriving at a wage agreement has been tried. This method makes the wage bargain dependent upon the collective action of a group representing the employer, the employee and the public and is distinctly a group bargain. Does the group process inaugurated under the Minimum Wage Law give improved bargaining strength to women? Let experience be examined and its lessons discussed. A preliminary question as to definition may first be raised. To what extent does the process used under the Oregon law conform to the concept of collective bargaining? Waldo R. Browne in his book *What's What In The Labor Movement* defines collective bargaining as follows, "Collective Bargaining is the method or process of determining the specific conditions of the labor contract by direct negotiation between the representatives of one or more trade unions, on

the one hand, and of an employer or association of employers on the other." [1] Under the Oregon method the representatives of the women employees are not representative of labor unions but of the entire group of employees, most of whom are unorganized. The employees' representatives have sometimes been members of unions, sometimes not. An additional variation from the conditions implied in the above-quoted definition is found in the fact that while the negotiations between employees and employers are direct they are under the leadership of the Industrial Welfare Commission. Definitions of collective bargaining could clearly be formulated which would exclude the Oregon process. With the variations in definition in mind it must be recognized that in contrast to the individual bargaining process the Oregon method may justly be termed collective bargaining, as it proceeds on a basis of direct negotiations between representatives of employers and employees as groups. It is distinctly a group bargain.

How does this collective process made obligatory by law affect the economic position of the wage earner? The woman as a lone bargainer is entirely eliminated from the industrial organization so far as the minimum wage, maximum hours and standard working conditions are concerned. Under the law no longer must an inexperienced and timid woman, driven by necessity, accept merely the amount in wages which an employer is willing to pay. No longer must she accept injustice in hours and working conditions simply because one lone voice will not be heard by the employer. In the matter of the minimum wage and in hours and conditions the women are no longer competitors but make their voice heard collectively through the Industrial Welfare Commission. It is there that the standards are set. For those workers substantially above the marginal wage the law does

[1] Browne, *What's What in the Labor Movement*, 1921, p. 75.

not directly supply an added bargaining strength, but the members of this group are by virtue of economic conditions in a more strategic position and already possess a fair degree of strength. The law leaves all workers above the minimum free to bargain individually or through organizations with the employers for any wage level above the agreed minimum. In one respect the law, while applying only to the lowest levels, really does aid those in the higher-paid groups, for the disastrous cutthroat competition of lower-paid workers is removed. Steadying the bargaining process in its lowest reaches reacts to strengthen the bargaining position of those receiving higher pay. In unregulated wage-fixing the most disastrous results come from the cutthroat competition at the bottom. This lowest-paid group is a constant drag on the general wage level.

The points where workers are competing against each other become *ipso facto* points of weakness in their dealings with their employers and any move which will reduce the severity of this competition will by its very nature strengthen the economic position of the worker. Waldo R. Browne, in his book previously referred to, quotes as follows:

> In the broadest sense it may be said that the chief function of collective bargaining is to establish and maintain the principle of uniformity in regard to all conditions of work and pay where competition direct or indirect can take place between individual workers, and the principle of standardization, or restrictive regulation by the group, of all changes in conditions of work and pay during the term of the wage contract.[1]

Professor Hoxie has admirably discussed in his book *Trade Unionism in the United States* the weaknesses incurred wherever laborers compete against each other. To the realization of this weakness he attributes their ob-

[1] Browne, *What's What in the Labor Movement*, 1921, p. 75.

jection to such policies as the piece wage, task system and bonuses.[1] Such individual competition is found in its most exaggerated and malignant form where women enter modern industrial life as lone bargainers. The Oregon law strikes a blow at this fundamental weakness.

The reasons for the lack of unionization among women have been pointed out. Analysis of the process of bargaining through the Industrial Welfare Commission shows that it overcomes these weaknesses inherent in unionization of women. Youth, inexperience, temporary position in industry, financial weakness, nature of their trades and employer opposition, all are swept aside and, through the leadership of the state, deliberate decisions based on careful study and wide experience are made as to minimum wages, conditions and maximum hours. It constitutes a successful effort " to substitute the democratic principle of negotiation and compromise for that of individual autocratic control ".

To the strength of the women is added the strength of the state. It takes charge of the agreement process and insures that the basis in wages, hours and conditions shall be arrived at collectively. Or it may be said, the power of the state is brought into the bargain in behalf of the women.

The shortcomings of the mass of women as a bargaining unit may be summed up in three things. First, lack of initiative; second, lack of organizing ability; third, lack of resisting power. At each one of these points the Oregon law steps in to fill out the deficiency. A woman in terror of losing her job can hardly be expected to assume the initiative to improve wages, hours or conditions, but the Industrial Welfare Commission especially charged with that very function will fail to do so only when the personnel has been permitted to become hostile to the purposes of the law. Lack of organizing ability is removed as an impediment to

[1] Hoxie, *Trade Unionism in the United States*, 1923.

group action by providing the machinery for arriving at the labor agreements in the shape of the Industrial Welfare Commission, conferences and public hearings.[1] The resisting power, which really determines the respective strength of the two sides, is no longer to be measured on the part of the women by their physical needs, by hunger or other economic pressure but by the good sense, judgment and determination of the Industrial Welfare Commission and supplementary conferences. Nor is the bargaining strength of the employer measured now primarily by his ability to wait for labor or to find a substitute but by his ability to present a convincing case in the conferences and hearings. Facts, not caprice or arbitrary determination, give him his strength.

To the deliberative process involved in reaching the agreements on minimum wages and maximum hours the women make two important contributions. While initiative, organization and resistance are largely supplied by the state, information and point of view, equally essential, are contributed directly by the women. They are not an exclusive source for this, of course, but an extremely fundamental one. While general studies on cost of living, effect of long hours, and similar matters are considered, the really vital information comes out of the experience of the women themselves. Much of this, it may be said, is being continuously supplied, even when conferences and hearings are not being held, through the complaints made by individual women and their rather frequent personal contacts with the secretary of the Commission, who is in practice the very heart of the administration of the law. The workers' point of view has ample means of finding expression. The personal complaints and interviews with the secretary of the Commission referred to give an insight into the woman worker's psychology. The meetings of the Commission and conferences and public

[1] *Cf.* Analysis of the law in Chapter II, *supra.*

hearings, in each of which the workers are personally represented, provide the medium for the direct expression of labor's point of view during the actual administration of the law.

With initiative, organization, power of resistance, information and expression of the woman's point of view all provided for, at least a reasonable strength is assured to women workers as bargainers. No longer is the process a single-handed battle in which every possible strength and advantage is given to the employer and every possible weakness and handicap placed on the woman workers. In bargaining strength the Oregon woman has gained tremendously through the law.

Before closing this chapter on bargaining strength the question should be asked as to what effect the minimum wage legislation may have upon the unionization of women wage earners.

Some evidence may be advanced to show that it will promote organization. The operation of the law brings some of the women together in conferences and hearings, giving at least a measure of training in cooperation and perhaps creating in some instances a nucleus for further organization. Many of them may be given a class consciousness which heretofore has been all but lacking. Into this class consciousness also there probably is instilled a new philosophy that says that it is possible to do something about the evils that exist. By raising somewhat the standards and giving a little additional financial strength an important item is added to the foundation for organization. Interesting difficulties have arisen in the administration of the law as to the methods of selecting the employee representatives, and it is possible that if the operation of the law had not been partially interrupted by the Supreme Court decision organization might have been attempted in order to furnish a more

effective method of choosing the employees to be members of the conferences.

On the other hand the opinions of labor organizations have been very much divided. While in a general way supporting legislation designed to improve conditions for the wage earners, labor organizations have had an instinctive fear that if favorable conditions are thus won the incentive to organization will be removed. Wage earners may be lulled to sleep by tolerable conditions and feel no need for group action or combinations. At times unions have given active support to the Minimum Wage Law and its administration, even to the extent of having representatives serve on the Commission and the conferences. Open indorsement has also been given in public statements. The following quotation from the State Federation of Labor relative to minimum wage legislation probably reveals, however, what is a deep-seated feeling:

> It is a well known fact that conditions of labor gained by legislation are not as helpful to organized workers as if they were gained by economic effort. Legislation, unless of a fundamental nature, results in lack of interest on the part of the workers in their organization.[1]

If the incentive to organize is removed by friendly legislation naturally they fear that unions will make headway more slowly if at all. However, the minimum wage applies solely to the very lowest economic group, affecting the majority only indirectly. Hence, at most, the incentive could be removed only from the very lowest economic group, a group which experience shows can hardly ever be organized even among men, for whom no minimum wage legislation has ever existed.

[1] *Year Book of the Oregon State Federation of Labor*, 1926, p. 5.

Undoubtedly there is truth on each side of the question but the very slow and halting way in which organizations spread among women before the advent of minimum wage legislation would hardly justify the failure to try the legislation for fear it would hinder unionization. There is practically everything to gain and nothing to lose. It must be recognized, however, that the fifteen years of operation of the law have not produced any measurable development of labor unions. So far as experience can testify the Minimum Wage Law has had no noticeable effect one way or the other. The truth probably is that the ease or difficulty of organizing women wage earners is controlled by other factors which the legislation influences only slightly. If this be true and the law makes some other genuine contributions it stands justified.

CHAPTER VII

Bases for Wage Adjustments

Since the determination of the rate of wages is not an automatic declaration of an unchangeable rate but is a process of bargaining through human agencies, emphasis is thrown upon the factors that enter into the fallible decisions and judgments of men. If these human decisions are to be fair to all concerned and workable they must not be haphazard but must be grounded upon some carefully considered and mutually acceptable bases. And here we meet one of the most difficult phases of the bargaining process, whether carried out through collective bargaining between employers and labor organizations or through the machinery of an Industrial Welfare Commission as provided for in the Oregon Minimum Wage Law.

What is a fair basis for the wage rate? Shall it be determined by "what the industry can afford" or "the productivity of the worker," or shall it be "a living wage"? To this difficult question legislators and commissions have turned their attention and the results of their efforts, though emphasizing the difficulty of finding a workable basis, give some contructive suggestions as to the lines of study and investigation that must be pursued in order to arrive at an adequate solution of the problem.

A brief examination of the bases that have at various times been adopted through labor agreements or laws gives the present trend of thought and investigation.

The drift away from arbitrary and autocratic determination of wage rates by employer decree has involved the

selection of declared bases for wage determination. When employers alone made the decisions no declaration of fundamental principles was necessary. Their will was the basis. Even when the rising labor organizations began to exert an influence through threats and strikes no fundamental principles were called for, since it was merely a matter of setting the wage by industrial war. Peace treaties at the close of industrial wars largely reflect superior power and its will rather than basic wage principles and reason. While these wage rates which resulted from industrial struggles did not rest on basic principles of wage determination they were in reality quite fruitful in opening the way to fundamental principles, since they called forth from the warring parties statements designed to present their respective cases in a favorable light before the bar of public opinion. These statements necessarily included wage objectives and their justification. If the story were completely told the roots of many of the recently declared wage bases would probably be found back in these strike justifications offered to the public by contending employers and employees. Note the following quotations of published statements by parties to disputes made to bring their cases before the public: The taxicab drivers during a strike in Portland, Oregon, declared, "Under present conditions [we] are not making a living wage. Most of the men have been making less than $5.00 a day including their tips." [1] Employer's reply: "It is not our policy to grant any demands. We will run our own business and we won't sign anything." [2] Restatement of objectives by head of the taxicab drivers:

We are going to win this strike because we are only asking what is fair and just. There is going to be no violence, no

[1] *The Oregonian*, July 30, 1926.

[2] *Ibid.*, July 31, 1926.

fights or any other difficulty. Certainly we are asking nothing out of reason in wanting one day off a week, a 10-hour day and a salary of $75.00 plus 10% of the receipts.[1]

Statement of employers during a threatened strike in the building trades in Portland, Oregon:

The Associated General Contractors have made an exhaustive study of wages and conditions in similarly situated cities and elsewhere and do not find the increases justified by comparisons.

A general canvass of the situation showed that enough trades were asking rises and 5-day-week concessions to increase, if all were effected, total building costs from 5 to 10 per cent in capital investment. Again 52 half-days taken out of the working year would give one less working month in the year, without equivalent increase in production and with all overheads to be spread against such reduction in effective work done.

The united front of this association is in the interest of the entire building industry and as a balance wheel toward avoiding such increase in wage and lowered production as will bring the costs of building to the prohibitive conditions which are being very nearly approached with a resulting cessation of work to be done.

The contractors feel the present situation to be one vital to the continuation of actual work, both for the men and for themselves, and are entrenched.[2]

The above quotations are fair examples of the many public statements made during strikes which perhaps unconsciously have helped to frame some of the principles of wage determination. It will be noted that the first statement by the taxicab drivers threw the emphasis upon the "living wage" concept. Then in reply to a brusk and autocratic statement from an employer the drivers voice an appeal to reason and fair play. The last of the above quotations clearly states the

[1] *The Oregonian*, July 31, 1926.

[2] *Ibid.*, April 27, 1926.

relation of competition to a particular wage problem and directs attention to the bearing which higher costs and possible unemployment should have upon a specific wage agreement. In the heat of industrial wars some of the rough castings of wage bases have been forged.

As wage rates and other conditions of labor have begun to be settled by peaceful negotiations and advance agreements there have gradually developed formal statements of the bases for wage settlements.

For example, in Oregon the agreement between the Portland Electric Power Company and Division No. 757 of the Amalgamated Association of Street and Electric Railway Employees of America provides as follows:

> Sec. 1. It is recognized by the parties hereto that the Company is engaged in operating street railways in the City of Portland, Oregon, and is obligated to give and the public is entitled to receive good, adequate and convenient service at a reasonable rate of fare; that the employees of the Company engaged in the operation and maintenance of said street railways are entitled to fair wages and fair working conditions, and that the Company and the holders of its stock and securities are entitled to fair and equitable treatment and sufficient revenues from the operation of said railways to discharge all proper obligations of operation, maintenance, taxes, depreciation, and in addition thereto to receive a reasonable rate of return upon the value of said property devoted to the public service.[1]

The terms of the agreement between the Closed Shop Branch New York Association of Employing Printers and the unions of their employees are an excellent illustration of the establishment of wage principles to be used in actual determinations and readjustments from time to time. Their

[1] *By-Laws and Revised Working and Wage Agreement of Division 757, Amalgamated Association of Street and Electric Railway Employees of America*, Portland, Oregon, 1928-1929, p. 15.

agreements read as follows, "Such readjustments to be based on the cost of living and the economic conditions of the industry". In the case of three of the unions a qualifying word was introduced making the agreement read, "based on the *increased* cost of living". In the 1920 arbitration cases held under these agreements the argument of the Press Feeders and Assistants' Union No. 23 interpreted "cost of living" to mean the amount of money necessary to support a wage earner and his family. "The economic condition of the industry" was held to mean the financial ability of the employers to pay the increases demanded. The employers on the other hand held that the cost of living factor meant only the increase since the last preceding adjustment and did not open up the whole question of the level of the standard of living. The employers interpreted the "economic conditions of the industry" to include general economic conditions since the printing industry is not in an industrial vacuum.[1]

Thus, formal agreements such as these from Oregon and New York have set up certain principles of wage determination subject to interpretation and modification in actual arbitration proceedings. They show a felt need for principles through which to work out actual wage rates and represent the gropings after effective statements of bases.

When we turn from these agreements between employers and employees and examine minimum wage laws to find the basis provided in them for wage determinations we are confronted with the same evidence of extreme difficulty in stating in a clear way a workable basis that may be an adequate guide for the commissions charged with the duty of setting the rate. Doubtless this is due not only to a difficulty in

[1] Soule, *Wage Arbitration.* Accounts of Book and Job Printing Cases, pp. 16 *et seq.*

finding words to express the desired concept but also to the fact that the concept is yet in a state of flux.

The following quotations are illustrative of the gropings of legislative bodies after a basis for the minimum.

Oregon—It shall be unlawful to employ women in any occupation within the state of Oregon for wages which are inadequate to supply the necessary cost of living and to maintain them in health; and it shall be unlawful to employ minors in any occupation within the state of Oregon for unreasonably low wages.[1]

District of Columbia—The board is authorized to declare: (a) Standards of minimum wages for women in any occupation within the District of Columbia, and what wages are inadequate to supply the necessary cost of living to any such women workers to maintain them in good health and to protect their morals; and (b) standards of minimum wages for minors in any occupation within the District of Columbia and what wages are unreasonably low for any such minor workers.[2]

Massachusetts—Each wage board shall take into consideration the needs of the employees, the financial condition of the occupation and the probable effect thereon of any increase in the minimum wages paid, and shall endeavor to determine the minimum wages, whether by time rate or piece rate, suitable for the female employee of ordinary ability in the occupation in question.[3]

British Columbia—On the request of the Board it shall be the duty of the conference to recommend to the board an estimate of the minimum wage proper in the occupation or industry in question, and adequate to supply the necessary cost of living.[4]

[1] "The Oregon Minimum Wage Law," *Session Laws of Oregon*, 1913, Chapter 62, pp. 92-99, section 1.

[2] District of Columbia Minimum Wage Law. U. S. Statutes at Large, 65th Congress, 1917-1919, vol. 40, pt. 1, *Public Laws*, ch. 174, pp. 960-964, section 9.

[3] "Massachusetts Minimum Wage Law," *Acts and Resolves*, 1912, ch. 706, pp. 780-784, section 5.

[4] *British Columbia Minimum Wage Law*, 1918, chapter 56, section 7.

The above statements of wage bases reveal widely varying opinions as to the proper standards for determining the rates of pay. A summary of the specifications of the above quoted bases together with those to be found in the remainder of the twenty-four laws in American states and provinces points to three elements which are considered in determining the rates of pay. They are: first, the nature of the work; second, the needs of the employee for a decent living; third, the financial condition of the industry. Besides these three there are also a few miscellaneous statements. An analysis of the laws shows that there are two cases in which the nature of the work is distinctly specified as a factor in the wage determination, though the mode of procedure makes possible the consideration of this in several other cases. In twenty-one cases the needs of the worker as involved in the necessary cost of living are distinctly specified as at least a part of the basis and they are implied in two others. In six cases specific mention is made of the financial condition of the industry and it is implied in two others. Great Britain varied the statements by applying the law to any branch of a trade where the rate of pay "is exceptionally low, as compared with that in other employments". A different analysis of the laws shows that all three of the above elements of basis are included in two of the measures; that the second and third elements are included together in five measures, but that a large majority of the laws specify only one element in the basis, namely the cost of living. In three cases no basis is declared and either the rate is directly set in the law or else the commission is left free to work out the problem as it sees fit.

In the Oregon law the minimum wage for adult employees is to be based on what is adequate "to supply the necessary cost of living and to maintain them in health". For minors it must not be "unreasonably low". For adult

women the law thus centers attention upon the cost of living, but it must not be thought that the condition of the industry and the nature of the work are in reality ignored. When any conferences are being held the employers are given due notice so that they may prepare their statements and are privileged to present their side of the case freely. Furthermore, they are especially represented upon the Commission itself and have three members on the wage conferences. In practice, therefore, the business itself is considered as well as the needs of the workers. The law also gives to the Commission the right to specify different rates of wages for different industries, indicating that the nature of the work may be taken into consideration along with the special financial conditions existing. The Oregon Commission has, however, in its later decisions been requiring a uniform minimum to apply to all occupations. More attention is thus given to the necessary cost of living than to the special conditions of the industries. The Oregon law also made it possible for the minimum to vary with localities, since cost of living or other conditions might vary with location.

Almost without exception these laws drive home the all-important question, What is a living wage? Its importance is not greater than the uncertainty of the answer that is given. The laws are filled with generalizations. "Necessary," "adequate," "proper," "suitable," "reasonable," "sufficient," "decent," "good"; the difficulty of the answer to our question has been evaded by means of the adjectives used. Relative terms such as these do not solve the difficulty but they do at least point out the direction in which we are groping and indicate our purposes. It must remain for experience through long years of individual decisions and study of particular conditions to work out what we mean specifically by our broad generalizations of the law. Even now, though the law is only of recent origin, we can see in

the experience already gained both in Oregon and elsewhere some of the particular elements that are a part of the generalizations.

At what are we aiming when we specify a "living wage"? Does the generalization, "necessary cost," imply that our goal is a bare subsistence? The statements of many laws answer this second question in the negative by specifying "proper," or "reasonable," or "decent". Though the Oregon law specifically mentions only "necessary cost of living" and "maintenance of health," the practice under the law has been more liberal especially so far as the study of the problem is concerned. The original survey upon which the law was based took into consideration besides food, clothing, shelter and needed medical care, allowances for laundry, church dues, lodge dues, education and recreation, including a vacation. It is not to be claimed that these have all had a liberal place in the final determinations of the minimum, nevertheless they are consciously in the minds of those charged with the administration of the law and help to give a liberal, not rigid, interpretation to the phrase "necessary cost of living".

The terminology found in some of the various attempts to specify the elements of the cost of living is extremely instructive. Besides "living," "needs," and "health" we find "welfare," "comforts," "conditions of reasonable life," "morals," "decent maintenance," "conditions consistent with welfare". Many of these distinctly reflect an aim for a minimum going much beyond mere subsistence or merely "necessary cost".

It must be definitely recognized that the term "living wage" must ever be a relative term, varying with our shifting standards of life. The concept is in a constant state of flux and its material content must be always changing so far as the individual items are concerned. In its embryonic

stage the term minimum wage signified practically nothing above a subsistence level, as is indicated by the fact that when first inaugurated in England it applied only to a few sweat-shop trades where wages were below even subsistance. By the time the Oregon law was passed the term had been sufficiently expanded to include items needed in a "health" standard. In actual practice in setting the minimum rate the studies of living costs were made to include some recreation and other comforts. A most important contribution of the hearings and conferences held in Oregon and other states in the administration of the minimum wage laws has been the gradual enrichment of this concept of a "living wage". These laws have helped to focus attention upon the problem of the wage level. From "subsistence level" we have progressed to "minimum health level," "minimum comfort level," and other enrichments of the concept appearing under various phrases. The germ idea has been unfolding.

A more recently emphasized suggestion and one that is finding response in the minds of those working on minimum wage schedules is that made by Secretary of Labor Davis, "a saving wage". In fact this element does not even necessarily expand the term "necessary cost of living" but is a part of it. A wage which simply paid the cost of subsistence during the years of the prime of life would not be even a "subsistence wage" so far as the entire lifetime of the individual is concerned. A wage which does not enable provision to be made for the lean years of life as well as the prosperous ones cannot be said to be even a "subsistence wage". Thus along with food, clothing, shelter and medical care must be placed even in "necessary cost of living" an allowance for saving.

The occasional opposition of employers to the inclusion of anything for "savings" may be illustrated from one of the first wage hearings held in Oregon. A woman testifying

was asked by the chairman of the conference if she could save anything out of the $45.00 a month she received. An employer in the conference here interposed that as he understood the Oregon law it was not the function of the conference to find out what an employee should receive in order to save money. "We are concerned with a minimum wage and that only," he said.[1]

One other element should be considered. Is it possible to concede that the wage earner is entitled, as part of the living wage, to at least some share in the material progress that is taking place? As years come and go, mankind is vastly increasing in wealth and these accumulations become the possessions of some one. As a partner in the activity which makes possible these accumulations is the wage earner, even one from the lowest level, entitled to participate in their possession? The point is this: if the Oregon Industrial Welfare Commission should succeed this year in arriving at a wage rate that is fair and reasonable and then in the months to come should keep that rate adjusted by means of an index number which accurately reflected the changes in the price level in Oregon, as time passed the rates could not be held to be giving justice since the laborers would not be sharing in the material advances which time was bringing. A wage rate sliding merely in accordance with the movement in the price level does not admit the wage earner to partnership in the material advances of mankind. He marks time while industry as a whole marches on. Might not a liberal interpretation of the phrase, "the financial condition of the industry," included in some of the laws mentioned above, prepare the way for making the wage basis include not merely adjustment on the basis of the cost of living but a share in material progress? While the studies, investigations and findings in Oregon have made no declara-

[1] *The Oregonian*, July 23, 1913.

tions that the minimum wage level should include any share in general material progress, such a share is actually being included, as is shown by the fact that since the war and the decline in living costs there has been no decline in the minimum wage rate. It remains at the level of the close of the war. The gains in the minimum money wage won during the war have been preserved and this in spite of the fact that the power of the law has been so much weakened by the unfortunate decision of the United States Supreme Court. The minimum wage level has held its own in spite of a receding index number of living costs, some unemployment, and the Supreme Court decision. The above retained gain is somewhat qualified by the fact that the minimum level during the war did not quite keep pace with the rising index number, but it still represents a real advance. In practice, then, the concept of a minimum wage will evidently include a share in the general gains in economic well-being. In fact, even though the Oregon law does not specify that the economic conditions of the industry be taken into account it is probable that the very term " necessary cost of living " includes some share in the general economic progress over and above necessary costs as measured by the changes in the index number. General improvements in economic well-being resulting from continued prosperity and progress result in higher general standards of living and hence in higher " necessary costs ". As general standards rise our estimates of even the " decent minimum " are gradually raised.

CHAPTER VIII

The Conferences and Hearings

Oregon's experience with the minimum wage legislation would seem to indicate that, important as the actual decisions as to wages, hours and other conditions are, the largest contribution to clear thinking and to industrial justice has come directly from the conferences and public hearings. Probably the basic advantage of the law is not in the clause that makes it illegal to pay a woman less than a decent wage but in the clause that provides for public discussion of the problems, in fact makes public discussion mandatory.

Under the Oregon law the regulations as to minors must pass through three distinct stages of consideration. First, the Industrial Welfare Commission takes the initiative in opening up the problem, deciding after a study of conditions whether or not new rulings are necessary and if so formulating the proposals. Second, these proposals must be submitted to public hearings open to all comers and giving opportunity for evidence or testimony which any one wishes to offer. Full and complete opportunity is given for employers and all others interested directly or indirectly to present their cases. Finally, after these public hearings the Commission again canvasses the entire problem itself and upon the basis of its own judgment as revised by the hearings declares its proposals in force.

The legal provisions for determining the wages and conditions for adult women, whether experienced or inexperienced, are quite different, requiring that the decisions must pass through five stages. First, a preliminary hearing

by the Industrial Welfare Commission which decides whether a problem meriting a hearing exists and which formulates, if so, the statements of the questions to be discussed. Second, an investigating conference consisting of nine members, representing employers, employees and public, which gives and receives testimony and recommends action to the Industrial Welfare Commission. Third, consideration by the Commission of the recommendations of the conference, which recommendations may be rejected and the question resubmitted to the same or to a new conference. If the recommendations are tentatively approved by the Commission they are passed on to the next stage. Fourth, a public hearing conducted by the Commission and open to any question and testimony by anyone interested. Fifth, final consideration and decision by the Industrial Welfare Commission.

Ample opportunity is thus afforded for every possible interest to express itself and the history of the conferences and hearings shows that all interests have availed themselves of the privileges. One of the opening sentences of this chapter is here worth repeating. Probably the basic advantage of the minimum wage law is not in the clause that makes it illegal to pay a woman less than a decent wage but in the clause that provides for public discussion of the problems, in fact makes public discussion mandatory.

The conferences and public hearings here outlined have taken place at frequent intervals from July 21, 1913, to May 24, 1922. The months immediately following the passage of the act and the war years of rising prices were filled with many conferences and hearings, but none have been held since May, 1922, the last order of the Commission to be adopted going into effect July 25, 1922, except for two orders relating to minors.[1] The cessation of conferences and hear-

[1] See Table VI, Chapter IX and Table XVIII, Chapter XII summarizing wage orders for experienced and inexperienced adult women.

ings in 1922 no doubt reflects the changed business conditions with a receding price level. The unfavorable attitudes taken by the Courts in the District of Columbia Minimum Wage cases in 1922 and 1923 also had their influence. The last conferences on wages were held, as a matter of fact, in 1919. In June, 1920, the Industrial Welfare Commission received a petition from the Social and Industrial Betterment Committee of the Federation of Churches asking the Commission to call a conference to which could be submitted the question of the increase of the minimum wage. The Commission deferred action at the moment because of a conference on women ticket clerks which was then in session. Changes in conditions which developed almost at once resulted in no further action being taken upon the request. Thus while more recent conferences than 1919 have been held, none of them has been upon the problem of wages.

As indicated in the preceding paragraph the initiative for wage hearings has sometimes been taken by others than the Commission. This is perhaps a good sign, showing a distinct interest on the part of others besides those charged with the enforcement of the law. Some of the hearings, though not as to wages, have been held at the request of business men; the Consumers' League of Oregon, the original sponsors of the legislation, made a move in November, 1917, to secure hearings, which were held early in 1918; the Churches, as already stated, made the most recent move as to wages, which, however, failed to bring any results.

The personnel of the conferences which have been held has been able and thoroughly representative of the varied interests concerned. For the employers there have been owners and managers of department stores and other large and small mercantile establishments, men whose interests are primarily in the rulings on office employees, representatives of various manufacturing establishments, woolen mills, box

factories, canneries, packing plants, representatives of out-of-state corporations, hotel men, telephone and telegraph company managers, representatives of the railroad companies. For the employees there have been women from offices, drug stores, woolen mills, canneries, department stores, ticket offices and other occupations. There has been one representative from organized labor. Some of the employee representatives have been of quite mature years, others have been young. For the public a number of well-known and prominent citizens have served. Officers of the Consumers' League, a city official, a president of the Professional Women's Club and others of like standing have given their time and study.

Both Portland and out-of-Portland employers and employees have been included in the personnel but for obvious reasons of convenience in attendance the majority have come from Portland, the leading city. The history of the conferences and hearings shows clearly that no attempt was made to bar any points of view from representation, for some of the representatives have been favorably inclined toward the legislation and some have been more or less openly hostile.

The testimony introduced throughout the hearings is infinitely varied and intensely interesting. First, there is a mass of inexpert testimony and evidence. This is a natural consequence resulting from the type of the conferences and hearings, in which free opportunity is offered to any one interested to present a case. The evidence is by no means " cut and dried ". Even the " free lance " has here an opportunity to be heard and has on an occasion or two been in evidence. While this introduces much irrelevant, inexpert testimony it gives a valuable vent to feelings, permitting them to be worked off and cooler reasoning to be substituted. That many of these bitter feelings have been cooled in the process of giving this inexpert testimony is evident from the fact

that the final recommendations made by the conferences have nearly always been made by unanimous vote. While the testimony is often inexpert it certainly injects into the decisions a needed attention to points of view deep-rooted, whether well-founded or fallacious. It puts a much needed emphasis upon certain realities which might be overlooked if only mass statistics were under consideration. The individual case is thrust up into consciousness and not completely lost in the mass data. The very inexpertness of some of the testimony seems to make the bargaining process more workable in the concrete situations.

In addition to the inexpert testimony there has been a considerable amount of fairly carefully collected data. Some was collected by business men at the request of the conferences; some was collected by business men on their own initiative. A portion of this was quite unbiased. Employees contributed facts collected from their fellow employees. Paid employees of the Industrial Welfare Commission collected a fair amount of material and one careful investigation was made by representatives of the United States Department of Labor. Expert testimony was also introduced by the secretary of the Commission itself and upon the occasion of one of the series of hearings a professor of economics was called in for counsel and testimony.

One of the most encouraging features in all the experience with the law is the spirit that has been manifested in these conferences and hearings. Frankness has dominated. Free speech has been the rule and even rather harsh criticism has been met with the utmost tolerance. With the most commendable patience an infinite number of details have been listened to and pleas considered, many of which were more or less irrelevant. The frankness, tolerance and honesty of the efforts to get at the truth are shown in the way in which several of the objectors have been the ones appointed to gather

some of the statistics needed. For example, in one of the conferences one business man took vigorous exception to the estimates as to costs of board and room and another to the allowances recommended for clothing. These men were themselves appointed to collect data on these two points and report back at the next session of the conference. Their figures may not have been gathered in a manner entirely accurate or impartial, but there is a tolerance in the methods that has greatly helped to create the spirit of cooperation and fairness without which the successful operation of the law is impossible. An important feature of the spirit of these conferences has been the willingness of various parties to admit their original errors and accept the evidence introduced. It is significant that in spite of the wide variation in views often expressed in the initial stages of the hearings the nine representatives of public, employees and employers have been able to harmonize their views to such an extent that very few recommendations ever had to be made except by unanimous agreement.

In addition to the specific rulings as to wages, hours and other conditions of work which emerged from these hearings there are many accomplishments. Many critics, no doubt, would regard them as intangible and more or less unreal, but the writer is inclined to believe that in the long run they may prove to be more significant than the immediate and specific rulings. First is the spirit which has been described above. Second, for large numbers of employers, employees and citizens, attention was focused upon the problems for the first time. Some had never before been really conscious that any such questions existed. Third, it placed the unreasonable person clearly upon the defensive, a gain which alone almost justifies any collective bargaining process. It introduced what courts and commissions have frequently contributed, " a rule of reason ". Fourth, the hearings may

be said to have "outlawed" an unduly low wage. Finally, the urgent need for many facts was revealed. The complexities of the problems stood out and suggested many lines for study and collection of statistical data.[1]

[1] The description of the trends of these conferences and hearings and the spirit manifested is based upon accounts of the hearings and personal interviews.

CHAPTER IX

The Minimum Wage Rates Established and Their Relation to Cost of Living

The multiplicity of factors which enter into the setting of specific wage rates, the innumerable influences that tend to make actual earnings depart from the wage rates legally established, the subtle forces that tend to cause real income to vary even when wage rates and money earnings are the same, all of these conditions must make the student of actual experiences under the minimum wage legislation very cautious in drawing conclusions. Yet even though the complexity of cause and effect is so great, the results must be analyzed and tentative suggestions and conclusions must be offered. Indeed, the very fact that the data are faulty and the cause and effect relationships are intricate and obscure challenges all the more careful and detailed analysis in order that some contribution may be made to tentative conclusions, or at least that some light may be thrown on the type of statistical data which needs to be gathered. The author is conscious of the very fragmentary and tentative character of the conclusions drawn and the suggestions offered. Careful study of the experiences of Oregon may possibly push forward a trifle the economic analysis of the problem, even though it must leave the conclusions in a state of perpetual tentativeness. It is the special objective of this chapter and the one which follows to discuss the actual minimum wage rates established and the problems related thereto.

Table VI summarizes the actual wage rulings as to time rates made by the Oregon Industrial Welfare Commission

TABLE VI. SUMMARY OF INDUSTRIAL WELFARE COMMISSION'S ORDERS ESTABLISHING MINIMUM WAGE RATES FOR EXPERIENCED ADULT WOMEN. COMPILED FROM PUBLISHED ORDERS OF THE COMMISSION

To whom applicable	Location	Date	Rates	Order Number
Experienced Adults Manufacturing	Portland	Nov. 10, 1913	8.64	2
		Sept. 1, 1916	8.64	9
		June 12, 1918	11.61	27
		Oct. 14, 1919	13.20	39
Experienced Adults Manufacturing	Outside of Portland	Feb. 7, 1914	8.25	5
		Sept. 1, 1916	8.25	10
		June 12, 1918	11.61	27
		Oct. 14, 1919	13.20	39
Experienced Adults Mercantile	Portland	Nov. 23, 1913	9.25	3
		Sept. 1, 1916	9.25	7
		June 12, 1918	11.10	25
		Oct. 14, 1919	13.20	38
Experienced Adults Mercantile	Outside of Portland	Feb. 7, 1914	8.25	5
		Sept. 1, 1916	8.25	8
		June 12, 1918	11.10	26
		Oct. 14, 1919	13.20	38
Experienced Adults Office[1]	Portland	Feb. 2, 1914	40.00	4
		Sept. 1, 1916	40.00	17
		June 12, 1918	48.00	32
		Oct. 14, 1919	60.00	44
Experienced Adults Office[2]	Outside of Portland	Feb. 7, 1914	8.25	5
		Sept. 1, 1916	8.25	18
		June 12, 1918	48.00	33
		Oct. 14, 1919	60.00	44
Experienced Adults Personal Service	Portland	Feb. 7, 1914	8.25	5
		Sept. 1, 1916	8.64	11
		June 12, 1918	11.61	28
		Oct. 14, 1919	13.20	40
Experienced Adults Personal Service	Outside of Portland	Feb. 7, 1914	8.25	5
		Sept. 1, 1916	8.25	12
		June 12, 1918	11.61	28
		Oct. 14, 1919	13.20	40
Experienced Adults Laundry	Portland	Feb. 7, 1914	8.25	5
		Sept. 1, 1916	8.64	13
		June 12, 1918	11.61	29
		Oct. 14, 1919	13.20	41

[1] Rates here are per month.

[2] Last two rates here are per month.

TABLE VI—*Continued*

To whom applicable	Location	Date	Rates	Order Number
Experienced Adults Laundry	Outside of Portland	Feb. 7, 1914	8.25	5
		Sept. 1, 1916	8.25	14
		June 12, 1918	11.61	29
		Oct. 14, 1919	13.20	41
Experienced Adults Telephone and Telegraph	Portland	Feb. 7, 1914	8.25	5
		Sept. 1, 1916	8.64	15
		June 12, 1918	11.61	30
		Oct. 14, 1919	13.20	42
Experienced Adults Telephone and Telegraph	Outside of Portland	Feb. 7, 1914	8.25	5
		Sept. 1, 1916	8.25	16
		June 12, 1918	11.61	31
		Oct. 14, 1919	13.20	43
Experienced Adults Public Housekeeping	Portland	Feb. 7, 1914	8.25	5
		Sept. 1, 1916	8.64	19
		June 12, 1918	11.61	34
		Oct. 14, 1919	13.20	45
Experienced Adults Public Housekeeping	Outside of Portland	Feb. 7, 1914	8.25	5
		Sept. 1, 1916	8.25	20
		June 12, 1918	11.61	34
		Oct. 14, 1919	13.20	45

for all experienced workers since the adoption of the Minimum Wage Law in 1913. Certain orders have also been issued as to piece rates in the manufacturing and laundry occupations and as to piece rates and hourly rates in the fruit industry. Discussion of these piece rates will be found on pages 144 to 148 with a copy in table XVI, page 147, of the last piece-rate orders in the fruit industry.

The experience with the wages of minors and other apprentices are discussed in chapter XII and the wage orders are summarized in table XVIII, page 179. Suffice it to say at this point that the Commission's first rulings were for these classes of workers and that in October, 1913, a uniform rate for the entire state was set at $1.00 per day. The rate for minors continued at this figure until June 12, 1918, when a

ruling became effective establishing $5.00 per week as the minimum for minors from fourteen to fifteen years of age, $6.00 for those between fifteen and sixteen, and $7.20 for those sixteen and over, with fifty cents added for each six months of age over sixteen until the age of eighteen, at which age the law requires the minimum wage rate for adults to be paid. On October 14, 1919, a ruling superseded the above, leaving the age groupings the same but raising the rates for the periods to $6.00, $7.20, $8.50, $10.50 and $11.50 respectively. This is the last wage ruling for minors made by the Commission.

As will be seen in table XVIII, page 179, by the first rulings passed in 1914 inexperienced adult workers were placed on the same basis as minors, with one year to serve as "inexperienced" at $6.00 per week. In September, 1916, this year of "apprenticeship" for adults, except for telephone operators, was divided into three periods of four months each with the wage rate graded at $6.00, $7.00 and $8.00 for the respective periods. The "apprenticeship" year for the telephone operators was divided into four periods of three months each with the wage rate graded at $6.00, $6.60, $7.20 and $7.80 respectively. In June, 1918, the minimum rates for the various periods of adult apprenticeship for all workers except telephone operators and employees in mercantile establishments were set at $6.20, $8.40 and $9.60 and then in October, 1919, the minimum rates were once more raised to $9.00, $10.50 and $12.00 respectively. For telephone operators the advance in June, 1918, raised their rates to $7.20, $7.92, $8.64 and $9.36 respectively for the four periods of their year and the advance in 1919 raised these rates to $9.00, $10.00, $11.00 and $12.00. The period of apprenticeship for mercantile employees was reduced by the wage ruling of June 12, 1918 from one year to eight months, divided into three periods of one, three and four months, for

which the minimum rates were set at $7.20, $8.40 and $9.60 respectively. The rulings of October, 1919, maintained the same length of periods, but raised the rates to $9.00, $10.50 and $12.00 respectively. In all the above cases the 1919 decisions of the Commission are the most recent rulings.

The first rulings adopted by the Oregon Commission for adult experienced workers partially differentiated those in Portland from those in the rest of the state. For the city of Portland special minimum rates were set for employees in manufacturing establishments at $8.64 per week, for those in mercantile establishments at $9.25 per week and for those in offices at $40.00 per month. This differentiation of office help from mercantile establishments was made because of the practice of paying office help at a monthly rate instead of a weekly rate. For the state outside of the city of Portland the rates for these three groups were set uniformly at $8.25 per week and then this rate of $8.25 per week was likewise established for all experienced adult workers in all occupations other than the above three throughout the entire state including Portland.

In September, 1916, the following occupations, personal service, laundry, telephone, telegraph and public housekeeping, were singled out and the minimum wage rate for employees in these occupations in the city of Portland was set at $8.64 per week, the same as the minimum rate in manufacturing establishments. The minimum rate for all occupations in the state outside of Portland was allowed to remain at $8.25 per week. Among the above specified occupations, personal service is defined by the Commission so as to " include manicuring, hairdressing, barbering and other work of like nature, and the work of ushers in theaters ".[1] Public housekeeping " includes the work of waitresses in restaurants,

[1] Industrial Welfare Commission Order No. 40, *Eighth Biennial Report*, 1929, p. 10.

hotel dining rooms, boarding houses, and all attendants employed at ice cream and light lunch stands and steam table or counter work in cafeterias and delicatessens where freshly cooked foods are served, and the work of chambermaids in hotels and lodging houses and boarding houses, and the work of janitresses and car cleaners and of kitchen workers in hotels and restaurants ".[2]

In June, 1918, the minimum rate for experienced adult employees in all occupations throughout the entire state including Portland was raised to $11.61 per week, except for mercantile establishments for which the rate throughout the entire state was set at $11.10 per week. For office employees paid by the month the rate set was $48.00.

Finally, in October, 1919, a state-wide rate for all occupations was established at $13.20 per week. For office employees the monthly rate was made $60.00.

The above outline of minimum rates reveals an interesting trend. Diversity characterized the early rates; diversity as to occupations, diversity as to locations, diversity as to degree of experience of the employee. As the rates were altered the trend was toward uniformity. This has progressed to the point where all distinctions as to location are eliminated and all distinctions as to occupation are dropped except that office employees are given a rate of $60.00 per month, slightly above the other minimum of $13.20 per week. The only variations that have persisted are those which rest upon the distinction between experienced adult workers and the inexperienced and minors. The early distinctions as to occupation and location clearly rested upon the legislation itself, which provided that the minimum rates should be set for each occupation by the Industrial Welfare Commission after conferences for each occupation. The act further stated that

[1] Industrial Welfare Commission Order No. 45, *Eighth Biennial Report*, 1929, p. 13.

Any conference may make a separate inquiry into and report on any branch of any occupation; and said Commission may make a separate order affecting any branch of any occupation. Any conference may make different recommendations and said Commission may make different orders for the same occupation in different localities in the State, when in the judgment of such conference or said Commission, different conditions in different localities justify such different recommendations or different orders.[1]

These provisions clearly indicate anticipation of at least two lines of disparity in the factors determining the minimum rates. First, cost of a decent living may vary between occupations and may vary according to location. For example, it was believed that girls working in offices and mercantile establishments were obliged to dress in a more costly manner than those working in factories and laundries and hence should be given a higher minimum to cover the higher cost of living. Second, industries may vary in their ability to pay wages, hence justifying again variations between occupations.

As already stated, this diversity has given way to almost complete uniformity. This trend toward identity in rates is due to at least two factors. The first is the final recognition that there is little basic difference occupationally or locally in necessary cost of living. While girls working in factories may not have to wear quite as expensive clothing as those working as clerks or in offices, the nature of their work is so much harder on the clothing worn that the actual cost is essentially the same. Food and rent show little variation between occupations. Also, investigations did not seem to disclose any essential difference in cost of living between localities. Hence the Commission had clearly open to it the opportunity to abandon the practice of varying rates accord-

[1] From section 12 of the Oregon law.

ing to occupations and localities. The second factor causing a trend toward uniformity in rates is administrative. The appointment of separate conferences and the holding of separate hearings for each occupation unduly increases the burden of investigation and causes much needless duplication of effort. Hence the hearings have been consolidated and the last group of wage rulings, Orders 37 to 48 inclusive, came from the Commission as the result of recommendation from the hearings of a single conference. The intricate complexity of the many hearings necessary if every branch of every occupation is to be treated separately can be readily seen in the experience of certain states and foreign countries which have pursued this policy consistently. The burdens of administration could soon so overwhelm the legislation as virtually to nullify it or at least so to clog it as to make it almost inoperative. Hence the trend toward uniformity in rates so far as occupations and locations are concerned. The variations in conditions of experienced and inexperienced workers are so fundamental that there has been no trend toward uniformity in rates of experienced workers and apprentices.

The wage problem is in some cases much complicated by the payment of piece rates. The law provided for this by declaring that where it appears that any substantial number of women workers in an occupation are being paid by piece rates the Commission shall establish such piece rates as will in its judgment be " adequate to supply the necessary cost of living " and " maintain them in health ". The Commission has established such piece rates in the fruit packing industry and has ordered in addition that the rates must be at least such as will yield certain rates per hour, 27½ cents for experienced workers and 22 cents for inexperienced, according to the last rulings of May 31, 1922. It is also specified that the piece rates paid must yield these rates to at least 50

per cent of all women employed, slow time workers being excluded from the percentages. A further analysis of the Oregon rulings, together with a table of the piece rates actually set in the fruit industry, is given in the following chapter.

Let us turn now from this statement of the actual rates set by the Industrial Welfare Commission's orders to see what relation these rates bear to the estimates of the necessary cost of living. Since a deficit between wages received and the cost of the necessaries of life was the cause of the passage of the legislation we eagerly scan the Oregon experience to see what relation, if any, actually exists between the rates ordered and the cost of living.

Turning first to the legislation we find three sections which deal with this question.

Sec. 1. . . . It shall be unlawful to employ women in any occupation within the State of Oregon for wages which are inadequate to supply the necessary cost of living and to maintain them in health; and it shall be unlawful to employ minors in any occupation within the State of Oregon for unreasonably low wages.

Sec. 4. Said commission is hereby authorized and empowered to ascertain and declare, in the manner hereinafter provided, the following things: . . . (c) standards of minimum wages for women in any occupation within the State of Oregon and what wages are inadequate to supply the necessary cost of living to any such women workers and to maintain them in good health; and (d) standards of minimum wages for minors in any occupation within the State of Oregon and what wages are unreasonably low for any such minor workers.

Sec. 8. . . . Accordingly as the subject submitted to it may require, such conference shall, in its report, make recommendations on any or all of the following questions concerning the particular occupation under inquiry, to wit; . . . (c) standards of minimum wages for women workers and what wages are

inadequate to supply the necessary cost of living to women workers and maintain them in health. In its recommendations on a question of wages such conference shall, where it appears that a substantial number of women workers in the occupation under inquiry are being paid by piece rates as distinguished from time rates, recommend such minimum piece rates as will in its judgment be adequate to supply the necessary cost of living to women workers of average ordinary ability and maintain them in health; and in its recommendations on a question of wages such conference shall, when it appears proper or necessary, recommend suitable minimum wages for learners and apprentices and the maximum length of time any woman worker may be kept at such wages as a learner or apprentice, which said wages shall be less than the regular minimum wages recommended for the regular women workers in the occupation under inquiry.[1]

These sections from the Oregon law clearly indicate that the legislature intended to provide a minimum wage for adult women equal to the necessary cost of living. Sections one and four show that a different basis was in mind for the minors but leave no doubt as to the intentions of the lawmakers so far as adult women are concerned. While these two sections are sufficiently clear, further study of the law discloses that other factors crept into the legislation which permit rather wide departures from "cost of living". The provisions of the act prescribing the method of selection of the conferences and the right of the Commission to order varying rates for different occupations or different branches of work within an occupation show that recognition was given to the dissimilarities of economic conditions of different industries and probably also to variations in productivity among classes of workers. Thus while "cost of living" was the ideal in mind the legislation was made to recognize

[1] Text of Act Creating the Industrial Welfare Commission of the State of Oregon. Chapter 62, General Laws of Oregon for 1913.

certain other realities of the situation. If these other factors crept in even during the process of lawmaking, how much more are they likely to make themselves felt in the heat of conferences, hearings and formal decisions.

The portion of section eight quoted above contains two items seemingly quite contradictory to the cost-of-living basis declared in section one. One item allows the conference to recommend piece rates which will supply the necessary cost of living to women workers of ordinary, average ability. This would establish an average or standard wage, not a minimum for *all* workers. The second item allows the conference to provide a period of apprenticeship for adult women workers and to recommend minimum wage rates for them below those recommended for experienced women workers. These rates for "learners" would obviously be below the cost of living. Neither of these two items in section eight can be harmonized with section one. The low rate permitted for learners is clearly a concession to the "productivity" basis of wage setting and can probably be justified since it will be paid for only a relatively brief time. The basis for the piece rates, however, is very difficult to explain. If the rates established are to be "minimum" rates why specify that they must be sufficient to give cost of living only to the "worker of average, ordinary ability"? The time rates are clearly designed not for the average worker but for the poorest workers regularly employed. Why should not the piece rates rest on a similar basis?

Even though other elements crept in and the basis is somewhat compromised, the clear intention of the legislation is for the fundamental minimum rate to supply the necessary cost of living. What, now, has been the actual experience? Let us examine first the conferences and hearings to see what part "cost of living" played in their discussions.

The first calls for conferences were clearly based upon the

findings published by the Consumers' League of Oregon as a result of their Social Welfare Survey. The following quotations show how they emphasized cost of living. From their data on living expenses and on actual wages being paid the declarations are made that, " The investigators have come to the conclusion that in Portland $10 a week is the least on which the average girl can support herself decently," [1] and,

> It will be observed that the average girl in every occupation, except office work, receives wages which are inadequate for her support, and consequently would face the end of the year in debt if she does not receive assistance from her family or some outside source. This shows the extent to which industries employing women are parasitic in character.[2]

To the first wage conference which was called under the act the Industrial Welfare Commission submitted a very plain question putting the cost of living squarely up for consideration. The question was,

> What is the sum required a week to maintain a self-supporting woman in frugal but decent conditions of living in Portland? The absolutely essential elements of such decent conditions are: (a) respectable lodging; (b) three meals a day; (c) clothing according to the standard demanded by the position such employee fills; (d) some provisions for recreation, care of the health and self improvement.[3]

It is significant that when the conference answered this question with a declaration of $8.64 they added the statement, " any lesser amount being inadequate to supply the necessary cost of living to women workers and to maintain them in health." " Cost of living " was manifestly in their minds.

[1] *Report of the Social Survey Committee of the Consumers' League of Oregon*, January, 1913, p. 20.

[2] *Ibid.*, p. 21.

[3] *First Biennial Report of the Industrial Welfare Commission*, 1915.

The wage question placed before the second conference, that on mercantile occupations, was worded in identical language, but when the question was placed before the conference on office employees the wording was changed so that it read, "What sum is necessary to supply a decent and healthful subsistence to a self-supporting adult woman engaged in office work in the State of Oregon?"[1] One cannot help but notice the inclusion of the word "frugal" in the first question and its omission from the one just quoted. This variation in statement calls attention to the relative character of cost of living as a standard. When in November, 1917, the Consumers' League of Oregon addressed its petition to the Industrial Welfare Commission calling for another wage conference they again stressed the cost of living. Their petition was as follows:

> Whereas, the minimum wage established by the rulings of the Industrial Welfare Commission which went into effect on September 1, 1916, is no longer adequate as wages have not increased in proportion to the cost of living, therefore,
>
> Be It Resolved, That the Consumers' League of Oregon in annual meeting assembled, do address a petition to the Industrial Welfare Commission to take such steps as are required by law to raise the minimum wage of minors and women workers in the State of Oregon.[2]

Thus the conference calls have duly stressed the place to be occupied in deliberation by "cost of living".

During the course of the various conferences and hearings there was a wealth of discussion bearing upon the cost-of-living phase of the problem. It is worthy of note that an occasional employer had already made some investigation regarding the cost of living among his own employees. It

[1] *First Biennial Report of the Industrial Welfare Commission*, 1915.

[2] *Third Biennial Report of the Industrial Welfare Commission*, 1919.

will be remembered that the Social Survey Committee of the Consumers' League had stated that the least wage a self-supporting woman could live on was ten dollars a week. One employer reported at the first hearing that he had made an investigation among his own employees and had found that $35 per month was needed to give a decent living. Another said that, following a visit from the Industrial Welfare Commission a short time before, the members of his firm had made an investigation and had determined that their employees needed at least ten dollars per week to live decently and had made that virtually the lowest wage in their establishment. " Perhaps we got religious after the commission called," he said. " Their visit may have quickened our conscience, but we know that there is a new conscience about these things, a popular awakening on the question of what is a proper wage. We must consider this awakening."

Some of the more or less random remarks made by opponents of increases during the course of the informal running conversations of the hearings are intensely interesting and help most decidedly to illuminate our understanding of the psychological processes going on. Twenty-five dollars a month for board and room was declared at first by one business man to be " out of all reason ". Another said the proposed allowance of $130 a year for clothing " seemed excessive ". He explained that he did not believe that a girl needed more money for clothing than a man did and that he could dress on $80 a year. Fifty cents a week for laundry was said by one employer to be too much as " They can do their own washings when they get home." At one of the hearings late in the war period when there could be no question as to the general advance of prices of food and clothing an attempt was made to get this offset by declines in rent which were declared to have occurred, since Portland was not in a very prosperous condition. One man who spoke for a group

of business men at one of the hearings made the point that every one seemed to want to spend too much and proclaimed that as a youth he had worked as a sheepherder at fifteen dollars a month and " got along comfortably ". Many such illustrations could be offered. Free speech was the rule and all these views received ample hearing. It is particularly significant that in spite of the general tenor of the remarks quoted above when the final decisions on the increases were made the order was always, except upon one occasion, adopted by unanimous vote; reasonable arguments and a tolerant spirit united to produce a fair compromise satisfactory in a measure to all.

Some of the types of data introduced bring out the need for careful collection of facts by some impartial agency, even during the possibly long intervals when no hearings are being held and no proposals are under consideration for alterations of the wage rate. Some of the employers gave questionnaires to some of their employees relative to their living costs. Such reports even when given under the very best of conditions could not be expected to yield data of very great reliability, much less when gathered by the employer from his own employees at the very time of wage hearings. The need of educating the public regarding the reliability of data gathered under varying conditions is well illustrated by the naive method undertaken by an employer to get an estimate of what it would cost to live in Portland. He inserted an advertisement in the paper stating that he wished to get room and board and then averaged up the rates quoted in the replies he received. Of course his conclusions were considerably below those otherwise secured. Such cost quotations are of little value unless accompanied by much other information as to location and consequent carfare, noon meals, laundry facilities and other highly relevant facts. Unquestionably even the intelligent portion of the public has only

slight appreciation of what constitutes reliable data. Already the Minimum Wage Law has justified itself in the education that it has given upon some of these vital matters, an education that will carry over into many labor problems besides those connected especially with women employees. The fundamental considerations involved in determining the wage of women in industry are inextricably interwoven with the facts needed and the methods to be pursued in the solution of the problems of men in industry.

In contrast with some of the preceding expressions, oftimes discouraging to the seeker after more equitable conditions for women workers, are some of the many frank and friendly approaches to the problem. When one of the hearings opened in 1916 to clear up the ambiguities existing in some of the rulings a resolution was introduced to exclude any discussion of raising the minimum in any of the occupations. To this one of the representatives of the employers objected, "If we show that the cost of living has gone up ten or fifteen per cent in the last two years we may satisfy you that there is some justification in the proposal to increase the minimum. It is probable that the $8.25 of two years ago has the buying power of only $7.50 now."

At the next session of the hearings when the proposal to raise the minimum from $8.25 to $8.64 was introduced, words of caution and suggestions for delay of action were met with the statement by an employer, "It is apparent to anyone that if it required $8.25 to sustain a woman two years ago, it cannot be done today. I don't see any use in quibbling about it at all. We should fix $8.64 as the minimum right now." Reference to the graph of wage changes on chart I, page 119, will show that it was during these 1916 hearings that the weekly wage rates were advanced in several of the occupations in Portland from $8.25 to $8.64. These employer statements frankly favoring increases are the re-

sult of studies and discussions of the cost of living for working women and disclose not only the importance of this living cost factor but also its potency.

One quite interesting feature of the conferences is the great emphasis occasionally put by the employer upon the fact that the rate set must be the *minimum*. When the first reference was ever made in the hearings to whether a woman could save anything out of her wage, declaration was made by one of the business men that as he understood the law it was not the function of the conference to find out what an employee should receive in order to save money. "We are concerned with a minimum wage, and that only," he said. In a later session of the conference another declared as follows: "This factor must not be overlooked. While employers do not wish to be placed in the position of denying the workers a proper wage, this is a question of a minimum wage that this conference is asked to determine not from a sentimental standpoint, but from a cold, hard, practical standpoint. We must get at what is a proper minimum wage and the question is not what a girl earns or what we think she ought to have, but what she must be paid to maintain herself in health." [1] Again, when the right to a vacation was under discussion this item was not thought by some of the employers to be within the scope of the conference in determining the amount required to cover the necessary cost of living. This emphasis upon the "minimum" indicates that the conception in mind was of a very low level of wages.

The employees have been rather free in giving testimony as to the amounts needed for decent living, their estimates running somewhat higher than those given by other sources. In the first hearings, for example, when the testimony settled at approximately ten dollars and less, women testified that

[1] *The Oregonian*, July 30, 1913.

they needed $10.50 per week, others that the amount should be at least $45 per month. The history of the conferences and hearings indicates that relatively little vital contribution was made by the direct testimony of the women as to the amount that should be set as the minimum needed for a decent living. This is exactly in line with what would be expected. Individual characteristics are so divergent that no two women could be expected to give similar testimony. Some are economical, some extravagant; some buy wisely, some foolishly; some are shrewd in their dealings, some are easily taken advantage of; some seem to be always fortunate, others always unlucky; some are optimistic and enterprising, others pessimistic and self-pitying. The numerous dissimilarities in human nature so distort and color estimates and judgments that the testimony of the employees cannot be accepted any more than that of the employers.[1]

The most needed evidence was present in the least quantity, namely, expert testimony, payroll records and statistical data. Table XIV given on page 131 in chapter ten is taken from the important though fragmentary study of conditions in the early years of the minimum wage experience in Oregon by representatives of the United States Department of Labor. This study has been much used for argument, though by the time any further wage adjustments were considered in Oregon the figures were no longer up-to-date. When, in response to the appeal of the Consumers' League in 1917, the Industrial Welfare Commission decided to hold a wage conference it collected wage data directly from the payrolls of employers. A copy of the summary of these data is given in table VII. This is the type of statistical material much needed and which should be collected at regular intervals

[1] For an excellent analysis of the variations in personal characteristics which affect our needs as to wages see the article, "Mr. Everyman, Manager," *Atlantic Monthly*, vol. 132, pp. 606-610.

TABLE VII. WAGE SCHEDULE REPORTED FOR THREE PERIODS AVERAGED (Taken from payrolls for one week during the months of October, 1917, November, 1917 and January, 1918. Third Biennial Report

Manufacturing Industries—Minimum wage, $8.64 per week

	$6.00–6.99	$7.00–8.63	$8.64–8.99	$9.00–9.99	$10.00–14.99	$15.00–19.99	$20.00–25.00	Total
Number employed	111.0	145.0	49.5	89.5	41.3	86.5	3.0	897.5

Laundries—Minimum wage, $8.64 per week [1]

	$6.00–6.99	$7.00–7.63	$8.64–9.99	$10.00–14.99	$15.00–20.00	Total
Number employed	0.0	2.5	89.5	48.5	7.5	148.0

Restaurants—Minimum wage, $8.64 per week [2]

	$26	$30	$35	$40	$45	$50	$55	$60	$65	$70	Total
Number employed	13	7	4	52	29	15	27	17	2	2	168

Mercantile Occupations—Minimum wage, $9.25 per week [3]

	$6.00–6.99	$7.00–7.99	$8.00–9.24	$9.25–9.99	$10.00 and over	Total
Number employed	237	117	77	462	943	1,836

Offices—Minimum wage, $40.00 per month [4]

	$6.00–6.99	$7.00–7.99	$8.00–8.99	$9.00–9.99	$10.00 and over	Total
Number employed	30	23	14	43	127	237

[1] Average for two periods.

[2] Three firms. Monthly basis includes three meals a day. Rate reported paid is per month.

[3] Three firms, two periods.

[4] Fourteen firms, two periods.

regardless of whether a wage hearing is approaching or not. Consciousness of the need of such figures seems to grow upon the conferences and upon those charged with the administration of the law, and it would seem to the writer that one of the greatest contributions of the minimum wage legislation would be the stimulation of the gathering of such facts. Such has undoubtedly been the line of development growing out of nearly all wage deliberation or public welfare commissions. One weakness so frequently present in the collection of wage data, practically always present in Oregon heretofore, is the failure to follow through with the same unit for the classes. For example, in table VII in the case of employees in manufacturing the first class covers a spread of one dollar, the next $1.64, the third 36 cents, the fourth $1.00 and the remaining classes $5.00. These varying units make it almost impossible to estimate even approximately the average wage or the standard deviation. Comparison with data from other states is difficult and doubtful because rarely will they have classes even approximating those used in Oregon. One can explain by reference to the particular minimum rates existing why these peculiar units were chosen for the classes but the explanation does not render the data more serviceable. Improvement in these details is of course only a matter of time and experience, and the last data collected by the Oregon Department of Labor, a portion of which is given in table XVII, page 152, show great progress. We can only regret that such wage figures have not been kept regularly since the inception of Oregon's wage determinations.

In the 1918 hearings the services of a professor of economics were secured, and tables VIII and IX represent the type of expert testimony thus introduced into the deliberations.

A statement made by one of the employers during these

hearings when this expert testimony was given is interesting as showing the impression made by facts and yet the slight effect they sometimes have. After the professor of economics had carefully explained and defended the figures on distribution of expenditures and cost of living one employer remarked, " I am gratified indeed, to hear such a practical explanation from a scientific man. The reasons you have given are very good ones. The practical man and the scientific man may be at variance, but a combination of their ideas will approximate the facts." Yet the scientific seems to have given way a great deal to the " practical ", for while it was shown that the advance in costs had been fifty-one per cent and the members of the conference conceded the force of the logic of the expert they decided that a fair basis for the calculations would be twenty-five per cent. Table VIII gives the distribution of increases leading to this approximate increase of twenty-five per cent.

TABLE VIII. COST OF LIVING STATEMENT SHOWING PERCENTAGE OF INCREASE IN OCTOBER, 1917 OVER PRICES IN JULY, 1916

Item	Source of Information	Percent Increase
Food	United States Bureau of Labor Report for December, 1917	38
Rent	Chairman Rental Committee of Realty Board. Taken from official report to the Chamber of Commerce for year ending December 31, 1917	20
Clothing	Portland merchants, three firms	25
Fuel	Portland fuel dealers	35
Car Fare		20
Sundries		20

TABLE IX. DISTRIBUTION OF EXPENDITURES IN WEEKLY WAGE

Item	Percent of weekly wage to be expended	Amount to be expended if minimum wage rate is $8.64 per week	Amount to be expended if minimum wage rate is $9.25 per week
Food	39	$3.37	$3.61
Rent	15	1.29	1.39
Clothing	26	2.25	2.40
Sundries	20	1.73	1.85
Total	100	$8.64	$9.25

A chronological survey of the conferences and hearings discloses a somewhat encouraging picture. The trend through the hearings has been toward a higher quality of testimony and a much greater amount of statistical data. We have been learning, have been becoming much more amenable to facts, much more conscious of the need of facts.

The discussions brought out a number of interesting sidelights on the cost-of-living factor, showing that attention was being paid to it even though it may not always have been the absolutely determining element. Light was certainly being thrown upon this aspect of the problem.

Contrary to the customary opinion women are often charged more for board and room than are men. This surprised some of the members of the conference who supposed that because a young man could get board and room for $35 per month, a girl could get it for considerably less. It was explained by the women that frequently a woman is charged more than a man, rather than less, because she is likely

to want to do a little cooking, some laundry work and other activities that make her less desirable about a boarding house.

A criticism of some of the girls which brought forth an interesting explanation was that many of them used no judgment but purchased clothing in extreme styles instead of buying simple clothes which would be economical. It is easy to understand why an employer who sees a girl dressed in an extreme fashion is likely to question the minimum wage as a *necessary cost of living* minimum. The explanation offered was that "the extreme modes of clothing are high priced when they first appear but at the close of the season they are always marked down far below standard apparel in order to dispose of the stock that will be out of fashion next year. The girls buy these, not from choice, but for economy." Perhaps this explanation but serves to illustrate that the ways of a necessary cost of living are almost past finding out.

Again, the discussions of the necessary cost of living have inevitably raised the question at times as to whether any increases might be necessary even though the price level had not changed. In other words, does the fact that the general standard of living has been advanced mean that a larger wage must be allowed for those who are at the minimum? The reader is referred back to chapter seven for a previous discussion of this point. When this subject was considered in one of the conferences a woman representative of the public in discussing it asked, "Are we not all entitled to a better living?"

Still again, the history of the conferences and hearings reveals the very great difficulty of keeping the cost-of-living issue from being completely clouded over and obscured by numerous other considerations urged by interested parties. Occasionally inter-store competition was driven into the foreground. Small or newly established stores charged that large and long established concerns could afford the higher

wage and were supporting it in order to drive the small competitor out. It was sometimes asserted that adopting the new, proposed minimum would frighten capital away from the state. Oregon was a new state, badly needing more capital, it was claimed. Such wage determinations were simply retarding Oregon's growth. It should perhaps be added that this is no new line of argument to an Oregonian but one that has frequently been urged against the adoption of an income tax and various other proposals. Suggested changes were also frequently opposed by the employers in the interests of their customers, or at least in the name of their customers. It is quite significant that in the midst of such obscuring and beclouding contentions the main issue of necessary cost of living should have been as successfully kept in the foreground as it was.

The war events gave rise to many attempts to undermine the legislation, not only as to wages, but also as to hours and other conditions. Here was an "emergency," it was said. "Men are volunteering for war service" and it is no time to take advantage of the situation and raise wages, thus seriously handicapping business. We must all make sacrifices, it was asserted, as a matter of patriotic duty, as "war-work," the women employees along with the rest. "Economy" was necessary on the part of everyone, to which some one present replied that you could scarcely begin enforcing more rigid economy from a girl receiving $6 to $8.25 a week. Finally, one other very important sidelight is thrown on the question as to whether a woman living at home and hence not under as heavy a cost of living is entitled to a minimum equal to her cost if she were "adrift". When this issue was raised by an employer the attitude of the Industrial Welfare Commission was clearly and forcefully stated by Rev. E. V. O'Hara, then chairman of the Commission.

The room and board of girls who live at home have to be paid

by some one. If the girl doesn't pay it herself, then she is subsidizing the industry for which she works and bringing down the general standard of wages for girls who must pay it. The fact that she lives at home should not be taken into account, for she is entitled to sufficient to pay her room and board whether she has to or not.

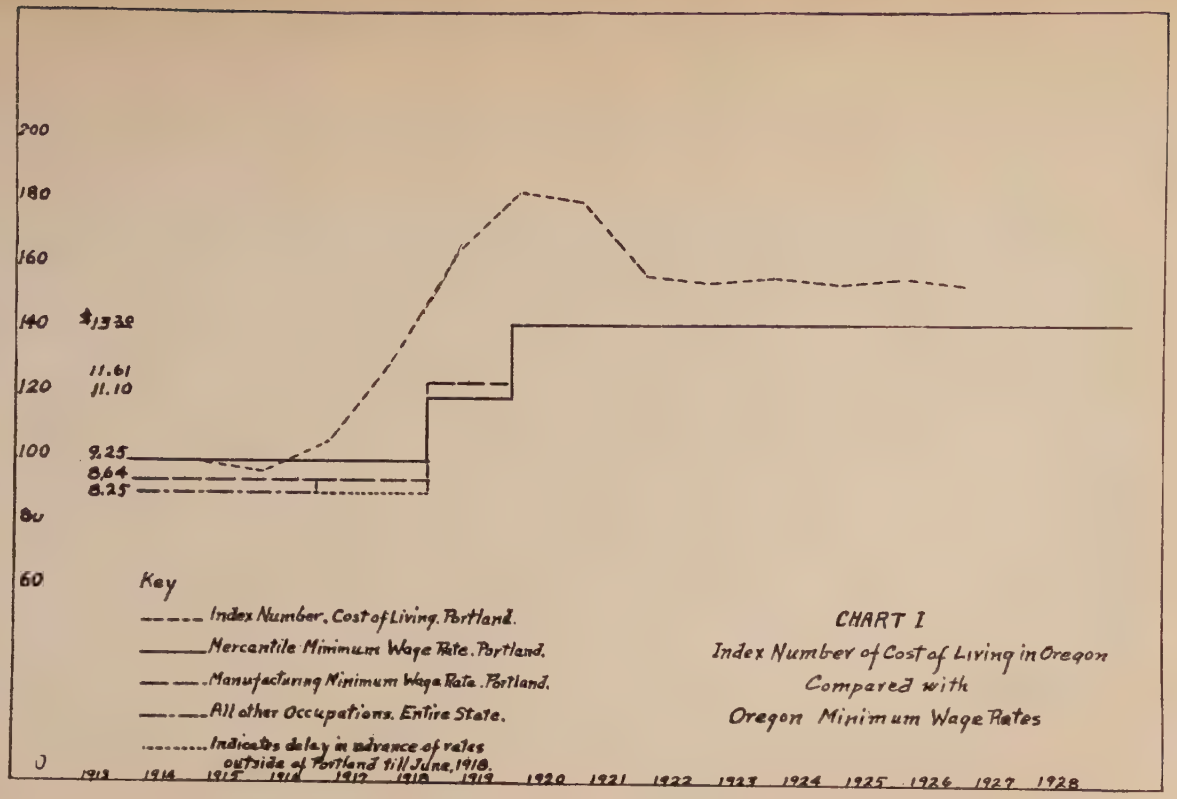
The stand here taken is in harmony with the general theory of the minimum wage as outlined in chapter seven. Family life is more economical per individual than life " adrift ", but by what line of reasoning does the employer convince himself that he is the one entitled to savings made thereby?

Constant discussion of the type provided for in these wage conferences and hearings is surely a fruitful source of more common ground upon which to analyze the wage basis and all the relevant factors. The history of these wage determinations [1] shows that " cost of living " was an ever present consideration even though the final determinations may have deviated somewhat from the levels which it alone would have dictated.

A few comparisons are of value in throwing light upon the degree to which the Minimum Wage Law enabled the rate of pay to equal the cost of living.

In the first place a comparison should be made between the rates set by the Industrial Welfare Commission and the index number of the cost of living. Curves for these are plotted together on chart I. The index number of the cost of living here used is that given by the United States Bureau of Labor for Portland, Oregon, and runs slightly below the index number for the entire United States, as may be seen by reference to chart IV, where both curves are plotted. In the graph of the wage rates the variation in minimum between mercantile, manufacturing and others is charted and where

[1] The incidents referred to throughout the preceding discussion were secured through accounts of the conferences and hearings and personal interviews.



[1] As reported by United States Bureau of Labor Statistics.

the rates become identical the solid black line so indicates. The graphs reveal a decided lag between the rise of the cost of living and the rise of the wage rate. Although the cost of living had distinctly risen by the close of 1916 and was up some thirty-one points by the close of 1917 no readjustments were made of the 1913-1914 minimum rates until the middle of June, 1918. June 12, 1918, new rates were declared in effect advancing the minimum twenty per cent in the mercantile occupations and about thirty per cent in all others, the increase amounting to about thirty-five per cent in all occupations outside of the city of Portland. This extra increase outside of Portland is accounted for by the fact that the earlier rulings had placed the rates in Portland a little higher than in the rest of the state and at this readjustment rates were made uniform throughout the state, thus giving a somewhat higher percentage rise outside of Portland, though placing them on a par so far as the minimum rates were concerned. These advances of twenty to thirty-five per cent were made in the face of a rise in the index number of at least forty-five per cent by that date. As shown by the chart no further readjustments were made for over one year. When in October, 1919, all the minimum rates were advanced to $13.20 per week, a rise of some forty-three to fifty per cent over the 1913-1914 rates, the cost of living had risen to an index number of about 180. These figures reveal a lag of almost one-half in amount, or stated in time a lag of a little over one year. The record of the remaining years is the hopeful sign. No reductions in the minimum rates have been made although the index number has declined from a maximum of 183 to the present level of 153. The present minimum is very close to the level of the cost of living when transferred to the 1913 base. The great lag of the minimum rate during the days of the war was probably not as serious as the figures would indicate because

the demand for women workers was so great that practically all workers received rates considerably above the minimum. The maintenance of the rate set in 1919 throughout the last few years of falling prices may possibly be much more significant than the lag in the advances made during the war years.

The true relation of the minimum rate to the cost of living was probably never quite as favorable as chart I would indicate, for it will be remembered that the estimated cost of living according to the survey made by the Consumers' League was $10.00 per week while the minimum rates set varied from $8.25 to $9.25 per week. If the true cost of living was $10.00 per week in 1914 then the curve of the index number should be still further above the rate lines than it now appears on the graph. If the findings of the Social Survey Committee were correct then the minimum rate never has been equal to the real cost of living.

Up to the time when the index number began to decline in 1920 it will be noted that there was a tendency for the hearings and readjustments to become more frequent. First, three years elapsed before there was any readjustment in the rate, then a trifle less than two years, then a little over one year. This may have been due to the more rapid rise of the index number as time passed; it may have been due to the fact that adjustments never had kept pace with the rising living costs; or it may have been due to a greater familiarity with the law and its possibilities and a greater reasonableness on the part of every one concerned. This greater reasonableness on the part of the employers may have been due to the fact that they were nearly all paying much above the minimum and the rate set made little difference to them. The writer is inclined to believe, however, that the history of the conferences and hearings shows a very genuine improvement in the point of view taken by the average employer.

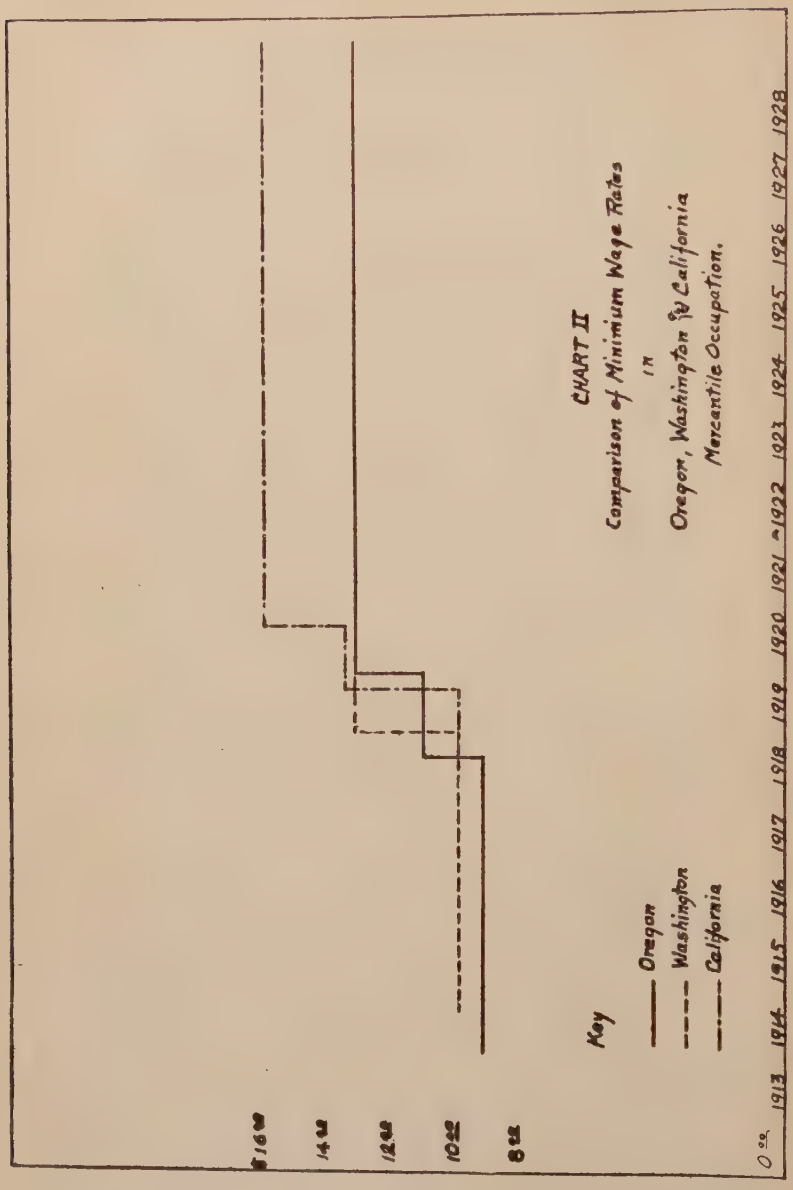
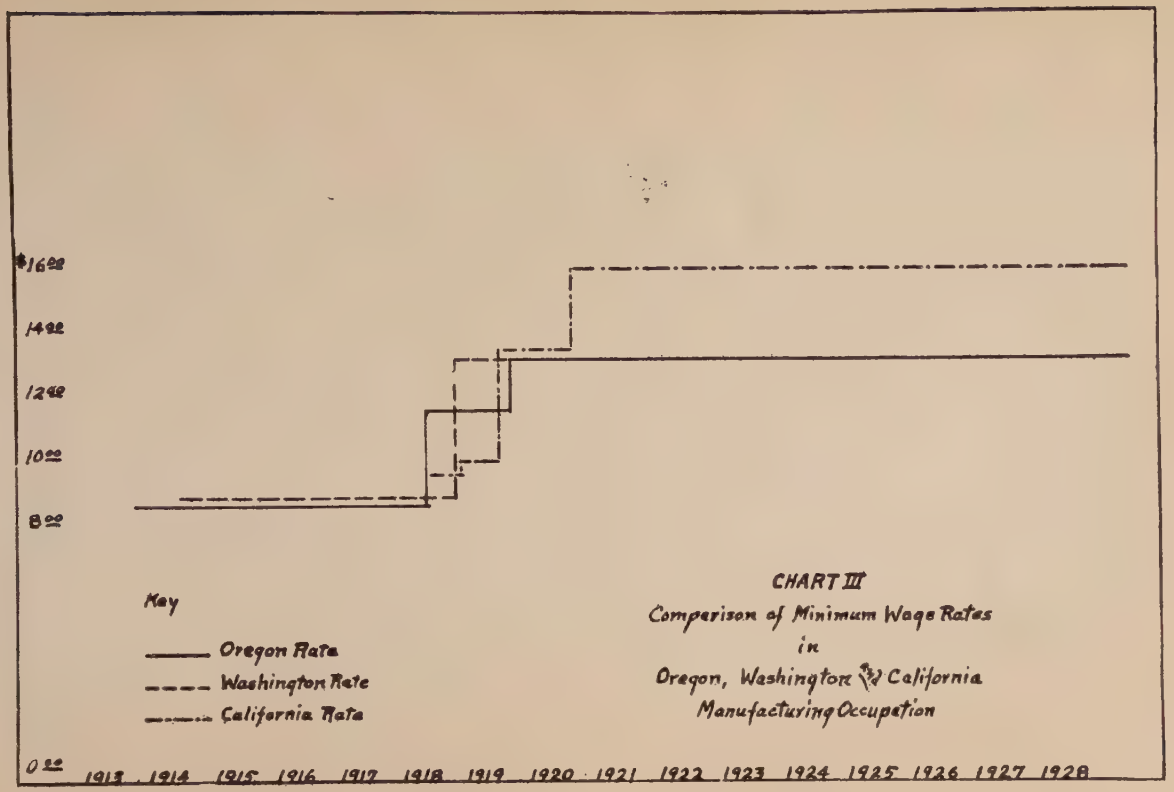


CHART II
Comparison of Minimum Wage Rates
IN
Oregon, Washington & California
Mercantile Occupation.
Key
Oregon
Washington
California
$16.00
14.00
12.00
10.00
8.00
0
1913 1914 1915 1916 1917 1918 1919 1920 1921 1922 1923 1924 1925 1926 1927 1928


$16.00
14.00
12.00
10.00
8.00
0.00
1913 1914 1915 1916 1917 1918 1919 1920 1921 1922 1923 1924 1925 1926 1927 1928
Key
Oregon Rate
Washington Rate
California Rate
CHART III
Comparison of Minimum Wage Rates
in
Oregon, Washington & California
Manufacturing Occupation

If the rates established in Oregon are compared with the rates set in the neighboring states of Washington and California it will be noted that Oregon rates averaged somewhat lower, or rather somewhat lower than California rates and somewhat more tardy in adoption than the Washington rates. See charts II and III. California rates came a little nearer to keeping pace with the cost of living in the last years. The Oregon rates, however, were not as unfavorable in the lag as charts II and III might indicate because the index number of cost of living for Portland was very considerably lower than those for Seattle, San Francisco and Los Angeles. The following table shows this lower index number for Portland.

TABLE X. INDEX NUMBERS OF COST OF LIVING IN PACIFIC COAST CITIES FROM DECEMBER, 1914 TO DECEMBER, 1926

(December, 1914 = 100.0)

Month and Year	Portland, Oreg.	Seattle, Wash.	San Francisco and Oakland, Calif.	Los Angeles, Calif.
December, 1914..	100.0	100.0	100.0	100.0
December, 1915..	96.9	99.0	98.3	98.1
December, 1916..	106.1	107.4	108.3	107.7
December, 1917..	131.2	131.1	128.6	128.9
December, 1918..	164.2	169.9	157.8	158.0
December, 1919..	183.7	197.7	187.8	185.3
December, 1920..	180.3	194.1	185.1	196.7
December, 1921..	158.3	171.5	163.6	176.4
December, 1922..	156.1	166.7	158.8	174.5
December, 1923..	157.8	168.5	162.1	178.8
December, 1924..	155.8	167.8	160.1	175.4
December, 1925..	156.9	171.7	164.7	177.4
December, 1926..	155.1	169.1	161.7	172.2

Bulletin No. 439, United States Bureau of Labor Statistics, p. 113.

Be it said to the credit of the Oregon rulings that they were the first to be made, appearing about seven months before the first Washington rulings and almost four years before

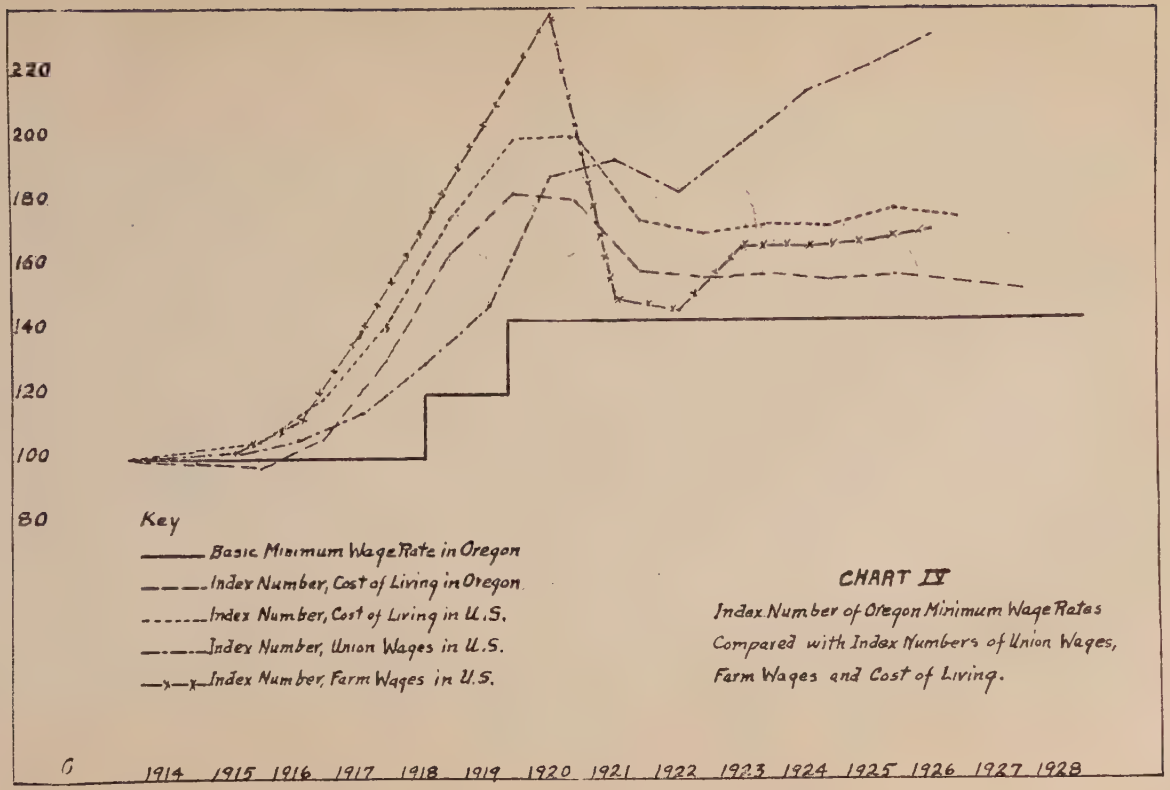


CHART IV

Index Number of Oregon Minimum Wage Rates Compared with Index Numbers of Union Wages, Farm Wages and Cost of Living.

the initial California decision for the mercantile occupations. It is also commendable to the administration of the Oregon law that it made the first advances above the $10.00 level, preceding California by almost a year. Except for the 1920 advance in California the three states acted fairly uniformly so far as relating the legal rates to the cost of living is concerned.

Still another interesting comparison is seen in chart IV, which graphs the index numbers for the Oregon minimum wage rate (mercantile rate used as the basis), farm wages in the United States and union wage rates. Here again the minimum rates show a decided lag, especially when compared with the farm wages in the early years and union wage rates in the later years. It must of course be remembered that the Oregon rates are minimum only, whereas these others are the standard rates. The standard rates for women workers in Oregon moved upward more than the minimum rates, as is shown in the discussion of the next chapter. It is regrettable that there are no fairly representative figures for the wage rates of women in general. No comparison is here possible.

CHAPTER X

Wage Rates Other than the Minimum, Earnings and Associated Problems

When investigation is shifted from the minimum rates and their relation to the cost of living to the wage rates above the minimum, earnings, employment and similar items, our data are if anything more fragmentary and unsatisfactory than ever. The facts have not been continuously gathered by any one source, since the Industrial Welfare Commission has always lacked the funds to gather the data which would be of most value. Most of the studies have been quite sporadic and so, though extremely valuable, have lacked sequence and have often been so constructed as to be hardly comparable one with another. As pointed out in the previous chapter the units used for the classes studied have often been so irregular and varying that exact conclusions are impossible.

The figures available for this part of the analysis come from four sources; first, the report of the Social Survey Committee of the Consumers' League of Oregon; second, the studies made in late 1913 and early 1914 by the United States Department of Labor; third, the studies made by the Industrial Welfare Commission, one in laundries in 1914 and another in 1917-1918; fourth, figures issued by the Oregon Department of Labor as to wages of women in the state.

What was the course of actual wage rates? Table XI on page 129 gives a summary of the actual rates of wages paid to minors, inexperienced adults and experienced adults

in the mercantile occupations just before and just after the first minimum rates became effective. Several facts worthy of comment here stand out in the table. First, there was practically an elimination of any employee, adult or minor, receiving less than $6.00 per week. The number of minors paid less than $6.00 declined from 38, or 26.2% of the total, to one, or 0.6%; the number of inexperienced adults receiving less than $6.00 declined to one, and the number of experienced employees on less than $6.00 per week disappeared altogether. Second, in the case of inexperienced adults there was a falling-off in the total numbers, and the drop came in those receiving between $6.00 and $9.23. There was a slight increase in the number receiving the lowest legal minimum, namely $6.00. The table shows also a slight reduction in the average rate of pay for this group, namely from $6.88 to $6.84. The Bureau of Labor Statistics in their report comment on this by saying that "the old employees were not reduced in pay, but the place of a $28 or $30 a month girl was filled by a $26 girl." [1] Somewhat compensating for the decrease just mentioned, at least worthy of note, is the fact that the number of inexperienced employees receiving either $9.23 or over increased. Third, for experienced workers, for whom the law is primarily intended so far as enforcing a minimum equal to the necessary cost of living is concerned, decidedly favorable consequences followed the establishment of the minimum rates. While there were still almost ten per cent receiving less than the amount required by law, indicating a considerable degree of violation, this was a reduction from a per cent of 26.6 receiving this before the determinations. The per cent receiving the minimum rose from 11.67 to 28.74, at the same time that the per cent receiving more than the minimum

[1] "Effect of Minimum Wage Determinations in Oregon," U. S. Bureau of Labor Statistics, *Bulletin No. 176*, 1915, p. 21.

TABLE XI. NUMBER AND PER CENT OF WOMEN AND GIRLS WHOSE WEEKLY RATES OF PAY BEFORE AND AFTER THE MINIMUM WAGE DETERMINATIONS WERE UNDER, EQUAL TO, OR OVER THE MINIMUM RATES FIXED, AS SHOWN BY THE PAY ROLLS OF 33 PORTLAND AND 7 SALEM RETAIL STORES. SHOWN FOR INDICATED GROUPS.

(*Bulletin No. 176*, Bureau of Labor Statistics, pp. 19, 21, 22)

	Under $6.00		$6.00		$6.00 to $9.22		$9.23 or $9.25		Over $9.25		Total Number	Average Wage
	Number	Per-cent	Number	Per-cent	Number	Per-cent	Number	Per-cent	Number	Per-cent		
Under 18 years of age:												
Before	38	26.2	77	53.1	30	20.7	..	..	..	..	145	5.93
After	1	.6	130	79.3	30	18.3	3	1.8	..	..	164	6.24
Inexperienced Adults:												
Before	9	4.66	70	36.3	109	56.5	4	2.1	1	.5	193	6.88
After	1	.61	82	49.7	65	39.4	14	8.5	3	1.8	165	6.84
Experienced Adults:												
Before	10	.76	24	1.82	351	26.61	154	11.67	780	59.14	1,319	11.62
After	..	..	20	1.63	115	9.39	352	28.74	738	60.24	1,225	11.85

remained practically unchanged. The average wage increased slightly, though not as much as might have been expected from the changes in the per cents here noted.

Table XII places together all the studies of the mercantile occupations made at various times which are reasonably comparable. All groups of workers, minors, inexperienced and experienced, are included in the figures. The striking feature of these figures is the decided drift of the workers toward the upper levels of wages, even in the very first years before the war influence had come into play. This is most evident if we examine the cumulative per cent at certain wage levels. Take two illustrations. First, in 1912, a total of 58.21 per cent of the women workers were receiving less than $10.00 per week. By 1917-1918, just before the minimum was raised to the $11.10 level, the per cent had been reduced to 48.6. The figures given by the State Labor Commissioner for 1926 and 1927 show that very few indeed now receive less than $10.00, the per cent being less than 2. Second, if we examine the numbers who received less than $15.00 per week we find that in 1912 all except 1.73 per cent were in this group. By the last figures for 1926 and 1927 this had been radically altered and a majority are now receiving $15.00, or more.

The conclusions to be drawn from the results compiled in table XIII, the wage distributions for the laundry workers, are almost identical.

Table VII on page 152, in addition to some of the figures already quoted for mercantile and laundry occupations, gives wage distributions for certain other occupations for which there are no statistics of earlier years with which they may be approximately compared. Though they cannot be directly contrasted with data for the earlier period of the minimum wage experience, they show distinctly that the wage level in practically all occupations is now fairly well up on the scale.

TABLE XII. COMPILATION OF SUCCESSIVE WAGE REPORTS ON THE MERCANTILE OCCUPATIONS IN OREGON

		Under $6.00	$6 to 6.99	$7 to 7.99	$8 to 8.99	$9 to 9.99	$10 to 10.99	$11 to 11.99	$12 to 12.99	$13 to 13.99	$14 to 14.99	$15 to 15.99	$16 to 16.99	$17 to 17.99	$18 to 18.99	$19 to 19.99	$20 and over
1912 Social Survey by Consumers' League of Oregon Special Report	Number	190	313	145	331	232	505	(Note 1)	326	(Note 2)	..	36	(Note 3)				
	Per cent	9.12	15.05	6.97	15.92	11.15	25.25	..	15.68	..	..	1.73					
	Cumulative Per cent	9.12	24.17	31.14	47.06	54.21	83.46	..	98.27	..	..	1.73					
1913 U. S. Bureau of Labor Statistics Bulletin No. 176	Number	142	250	496	(Note 5)	147	597	(Note 7)									
	Per cent	8.7	15.3	30.4	..	9	36.6										
	Cumulative Per cent	8.7	(Note 4) 24.0	54.4	..	(Note 6) 63.4	36.6										
1914 U. S. Bureau of Labor Statistics Bulletin No. 176	Number	3	270	190	(Note 5)	338	564	(Note 7)									
	Per cent	.2	10.8	13.9	.	248	41.3										
	Cumulative Per cent	.2	(Note 4) 20.0	33.9	..	(Note 6) 58.7	41.3										
1917–1918 Payroll Study by Industrial Welfare Commission Third Biennial Report	Number	..	237	117	77	62	943	(Note 8)									
	Per cent	..	12.9	6.4	4.2	25.2	51.4										
	Cumulative Per cent	..	12.9	19.3	25.5	48.6	51.4										
1926 Bureau of Labor of State of Oregon Thirteenth Biennial Report	Number	5	2	2	10	24	132	53	116	643	185	767	222	276	303	114	457
	Per cent	.15	.07	.07	.3	.75	3.98	1.6	3.5	19.4	5.6	23.1	6.7	8.3	9.2	3.5	13.8
	Cumulative Per cent	.15	.2	.21	.60	1.3	5.2	6.9	10.4	29.8	35.4	58.3	65.2	73.6	82.7	86.2	13.8
1927 Bureau of Labor of State of Oregon Thirteenth Biennial Report	Number	2	..	2	11	31	126	35	124	723	221	549	224	282	298	105	574
	Per cent	.05	..	.05	.3	.93	3.79	1.52	3.76	21.7	6.4	16.5	6.9	8.5	8.9	3.2	17.9
	Cumulative Per cent	.05	..	.10	.4	1.38	5.2	6.2	9.95	31.7	38.3	54.8	61.6	70.0	78.99	82.1	17.9

Note 1. Figures include from $10 to $11.99.

Note 2. Figures include from $12 to $14.99.

Note 3. Figures include all over $15.

Note 4. Figures include $6 only.

Note 5. Figures include $6.01 to $9.25.

Note 6. Figures include $9.23 and $9.25 only (depending on whether woman is paid by week or month).

Note 7. Figures include all over $9.25.

Note 8. Figures include all over $10.

TABLE XIII. COMPILATION OF SUCCESSIVE WAGE REPORTS ON THE LAUNDRY OCCUPATION IN OREGON

Source		$6 to 6.99	$7 to 7.99	$8 to 8.99	$9 to 9.99	$10 to 10.99	$11 to 11.99	$12 to 12.99	$13 to 13.99	$14 to 14.99	$15 to 15.99	$16 to 16.99	$17 to 17.99	$18 t 18.99	$19 to 19.99	$20 to 20.99	$21 to 21.99	$22 to 22.99	$23 to 23.99	$24 to 24.99	$25 and over
1912 Social Survey by Consumers' League of Oregon Special Report	Number	29	38	41	22	6 (Note 1)		4 (Note 2)													
	Per cent	20.6	27.1	29.2	15.7	4.2	..	2.8													
	Cumulative Per cent	20.6	47.8	77.1	92.9	97.2	..	2.8													
1914 Study on Power Laundries by Industrial Welfare Commission. Special 1914 Report	Number	60	153	186	96	231 (Note 3)															
	Per cent	8.2	21.1	25.6	13.2	31.8															
	Cumulative Per cent	8.2	29.0	54.6	67.8	31.8															
1917–1918 Payroll Study by Industrial Welfare Commission. Third Biennial Report	Number	..	2.5 (Note 4)		89.5	48.5 (Note 6)		..	..	..	7.5 (Note 7)										
	Per cent	..	1.7	..	60.5 (Note 5)	32.7	..	..	..	..	5.1										
	Cumulative Per cent	..	1.7	..	62.2	94.9	..	..	..	..	5.1										
1926 Bureau of Labor of State of Oregon. Thirteenth Biennial Report	Number	5	1	4	5	12	31	73	210	220	241	176	100	137	29	56	17	22	7	9	26
	Per cent	.4	.07	.3	.4	.9	2.24	5.3	15.2	15.9	17.4	12.7	7.2	9.9	2.1	4.1	1.2	1.6	.5	.6	1.9
	Cumulative Per cent	.4	.47	.6	1.1	1.9	4.2	9.5	24.7	40.5	58.0	70.7	78.0	87.9	90.0	..	..	10.0 (Note 8)			
1927 Bureau of Labor of State of Oregon. Thirteenth Biennial Report	Number	5	4	1	0	13	27	116	182	258	201	205	103	116	67	54	24	23	2	12	36
	Per cent	.31	.3	.07	0	.9	1.9	8.0	12.6	17.8	13.9	14.1	7.1	8.0	4.6	3.8	1.7	1.6	.14	.9	2.5
	Cumulative Per cent	.31	.61	.8	.8	1.6	3.45	11.5	24.0	41.8	55.7	69.8	76.9	84.9	89.6	..	10.4 (Note 8)				

Note 1. Figures include from $10 to $11.99.

Note 2. Figures include all over $12.

Note 3. Figures include all over $10.

Note 4. Figures include from $7 to $8.63.

Note 5. Figures include from $8.64 to $9.99.

Note 6. Figures include from $10 to $14.99.

Note 7. Figures include all over $15.

Note 8. Per cent includes all over $20.

One important question upon which the findings of the United States Bureau of Labor Statistics study in 1913-1914 threw some light was the influence of the establishment of the minimum wage rate upon earnings as distinguished from wage rates. The following table summarizes the findings:

TABLE XIV. AVERAGE WEEKLY EARNINGS AND HOURS OF LABOR OF WOMEN AND GIRLS BEFORE AND AFTER MINIMUM-WAGE DETERMINATIONS. GROUPED ACCORDING TO AGE AND EXPERIENCE, IN PORTLAND DEPARTMENT, DRY-GOODS AND 5 AND 10 CENT STORES

	Classification of women employees					
	Girls under 18		Adult inexperienced		Adult experienced	
	Number	Average weekly earnings	Number	Average weekly earnings	Number	Average weekly earnings
Department, dry-goods and 5 and 10 cent stores:						
Before determinations	135	$4.71	177	$5.22	1,047	$9.77
After determinations	157	$4.92	139	$5.67	941	$10.21
Per cent increase (+) or decrease (—)	+16.3	+4.5	—21.5	+8.6	—10.1	+4.5

U. S. Bureau of Labor Statistics, *Bulletin No. 176*, p. 27.

Two factors may cause earnings to be different from the wage rate, namely, the steadiness of employment and the additional sums commonly known as P.M.'s, paid for selling certain lines of goods, and bonuses, paid for finding mistakes in sales checks. These extra sums, P.M.'s and bonuses, had

been fewer in number at the time the Labor Department made its study, so that the chief influence was regularity of employment. The figures given in this table are for department, dry-goods and five and ten cent stores only, since it was in these establishments that conditions were steadiest and most clearly influenced by the minimum wage rulings rather than by conditions peculiar to particular business concerns. The earnings of minors advanced 4.5 per cent, those of inexperienced adults 8.6 per cent, and those of experienced workers 4.5 per cent. These advances in earnings are made even more significant in the case of minors and experienced workers than the size of the figures would indicate, by the fact that the gains took place in the face of a slight reduction in the hours worked. It should be remembered also, as has been pointed out in chapter three on business conditions in Oregon, that these advances occurred at the very time that there was a recession in the prosperity of the state which would naturally have tended to create irregularity of employment and diminished rather than augmented earnings. Two further facts must be emphasized. The minors and inexperienced workers were still receiving considerably below the rate set as the minimum necessary to supply a decent living. In the case of minors this shortage was very considerable, since the average earnings were still below $5.00 per week. On the other hand the earnings of the adults, both experienced and inexperienced, had advanced more rapidly than their rates of pay, in fact in the case of inexperienced adult employees the increase in average earnings of 8.6 per cent developed in the face of a slight decline in the average wage rate. The figures show also that in the case of experienced adults, though actual earnings run below the nominal wage rates, they are moderately above the minimum rate set by law.

In view of this tendency for actual earnings to be at a

point somewhat below the level of the nominal wage rates the question is fairly raised whether or not this fact is sufficiently attended to in establishing the minimum rate. In setting the minimum there seems to be a tacit assumption, contrary to fact, that earnings and rates are synonymous. Should the attempt be made to make earnings equal a minimum level, or the wage rate equal a minimum level? Unforeseen irregularities in work make it not feasible to specify that earnings have to be at a certain minimum; but this simply constitutes all the better ground for carefully taking this lag of earnings below rates into account in setting a minimum rate.

Coincident with the first discussions of a minimum wage and the first wage orders came the oft-repeated charge that the operation of the law would be inimical to the best interests of the better paid employees since the minimum would become the maximum; the better paid would have their wages cut in order to raise the pay of the lower levels. This claim has been so widely made and so constantly repeated and has come from so many sources that it is necessary to give it careful consideration. If it be true, then the wisdom of the act is certainly challenged.

This claim, that the minimum will become the maximum and that the wages of the better paid will be sliced off in order to compensate for the advances necessary in the lower wage brackets, has an extremely familiar ring to the ear of a student of the rise of the labor movement. One almost hears again the voices raised in England long ago which claimed that when any group of laborers organized and succeeded by collective bargaining or strike activities in raising their wages it merely lowered the wages of other laborers. Such a line of argument has had a high degree of plausibility both then and now, though the wage theory then current made it more plausible in the middle of the nine-

teenth century than it should be today. The argument was used in the nineteenth century in order to line up labor itself in opposition to the rising organizations of workers. It has been used today in order to induce the better paid women to oppose the adoption of minimum wage legislation.

The assertion that the adoption of a minimum wage law will lower the wages of the better paid groups revives the old theory of a "wages fund". If it were true that there existed a rather rigid wages fund then one could hardly question the correctness of the above assertion, but modern wage theory has progressed far beyond the wages-fund stage. We now see production from which wages must be paid not as a fund but as a flow of goods. Wage determination is no automatic process ruled by an iron law. The recognition of the large part which bargaining plays in the process has admitted such a large measure of the human element into wage determinations that we are forced to recognize that some wage increase may be secured without the cost of it coming out of the wage of other employees. It may come from the employer or it may come from increases in productivity. The wages-fund theory is so completely discredited that unless the assertion that the minimum will become the maximum can find some further foundation it must be rejected.

Not only does this assertion assume a discarded wage theory but it ignores a very significant fact, namely, that workers above the minimum are thus paid because of their ability and worth to the employer. There may of course be exceptional situations where the higher pay represents the whim or caprice of an employer or employment manager but as a rule the better paid worker is receiving the reward of greater efficiency. The wage of a worker in the higher paid levels does not consist of a minimum only but, composite-like, consists of this minimum plus a differential tending to

be proportional to the superior skill and productivity of the better workman. The minimum wage law will raise the first of these elements but does not eliminate the differential. As a matter of fact quite a convincing case might be advanced to defend the proposition that the adoption of a minimum would actually operate to raise rather than lower the pay of the group above the minimum. A low paid group, weak in bargaining position and willing, because of ignorance or need, to accept almost any rate of pay, is verily a millstone dragging down on the industrial position of all workers. Any relief secured in the bargaining position of the bottom levels releases a little of the downward pull on the wages of the upper brackets. The employer, under the necessity of paying a respectable minimum and unable to compensate for inefficiency with low pay, is actually stimulated to prefer the employee of ability rather than the lower grade worker. Inevitably there is raised here a question regarding the group that may be called unemployable. They constitute a problem to be dealt with separately. A discussion of this problem will be found at the close of chapter thirteen. There is competition to secure the employee of greater ability and the pay of the efficient instead of falling should tend to rise. Testimony and experience upon these points are abundant, and have been freely given, yet the assertion that the minimum becomes the maximum continues to be made so frequently that the testimony and experience must be here restated.

The District of Columbia minimum wage board in 1919 after giving figures showing that the proportion of employees receiving above the minimum increased after the establishment of the rates, declare as follows:

> As time goes on the force of competition will in all probability tend to increase the per cent of employees in both the printing and mercantile industries receiving above the minimum.

Without awaiting further developments, however, it may safely be deduced from these figures that under a minimum wage skill and experience do count and that workers of more than average ability do secure recognition of their superior value.[1]

Note the emphasis here upon the facts that "skill and experience do count" and that "workers of more than average ability do secure recognition". Luther C. White, one time Employment Manager for the Clothing Manufacturers' Association of Boston, Mass., gave the following testimony upon this same point in a letter to the National Consumers' League:

Our attitude is not altruistic in the matter, for we think we know that skilled labor at a fair wage is the cheapest for the manufacturer who wishes to turn out a properly made product. All the clothing manufacturers do not see this, and in the press of competition are inclined, perhaps, to disregard the quality of product and use "cheap" (i. e. low-priced) labor to the detriment of trade conditions as a whole. With a minimum fairly set, no manufacturer will do this—he will prefer to pay a wage higher than the minimum and secure competent workwomen, rather than pay a high (?) minimum to inefficient workers.[2]

The following little statement from the report of the Anti-Sweating League in Great Britain in 1913 brings out the same argument and indicates how experience was substantiating it.

It was the view of those who favored this course (fixing a minimum rate for the entire country) that, on top of the uni-

[1] District of Columbia Minimum Wage Board, *Second Annual Report*, 1919, p. 27.

[2] Letter to the National Consumers' League from Luther C. White, then Employment Manager for the Clothing Manufacturers' Association of Boston, Mass., 1920. Quoted in the *Brief for the District of Columbia Minimum Wage Law before the United States Supreme Court*, 1922, vol. ii, p. 494.

versal minimum, the forces that originally determined the relative levels of district wages would continue in activity, and the case of Leeds shows the expectation well founded.[1]

One other quotation on the general theory involved will be much in point before turning to the testimony of actual experience. Sidney Webb offers the following:

. . . We must first get clearly before us the distinction between the fixing and enforcing of a minimum, and the fixing and enforcing of a wage. What is here in question (as in all factory legislation) is a minimum, not a maximum, still less any actual decision that the wage shall be such or such sum. It ought not to be necessary to point this out.

Here we have, in fact, the lesson of actual experience from a whole century of industrial history. It is only necessary to watch the operation, in trade after trade, of analogous common rules, many of them enforced by law. These common rules, like the legal minimum wage, are always minima, not maxima. Every employer prefers to be free to do whatever he chooses; to compete in any way he pleases, on the downward way as well as on the upward way. But the enforcement in any industry, whether by law or by public opinion, or by strong trade unionism, of a standard rate, a normal day and prescribed conditions of sanitation and safety, does not prevent the employer's choice of one man rather than another, or forbid him to pick, out of the crowd of applicants, the strongest, the most skillful, or the best conducted workman. The universal enforcement of a legal minimum wage in no way abolishes competition for employment.[2]

Quite significantly Mr. Webb points out that it makes no difference whether the minimum rate is set by law, by public opinion or by strong trade unionism.

[1] Report of the National Anti-Sweating League, 1913. Quoted in the *Brief for the Oregon Minimum Wage Law before the United States Supreme Court*, October Term, 1916, p. 662.

[2] Webb, "The Economic Theory of a Legal Minimum Wage," *Journal of Political Economy*, December, 1912, pp. 6, 7.

Wage theory thus fails completely to uphold the contention that the minimum tends to become the maximum. Competition is still keen, probably even keener, for the worker of outstanding ability.

Not only does wage theory fail to uphold the contention but experience in all sections actually making trial of minimum wage legislation denies the validity of the assertion. The following widely scattered experiences are an example of many more that might be introduced.

Great Britain. . . . The Confectionery Trade Board, for instance, has never dealt with anything more than the minimum for an unskilled worker. Each alteration of that minimum for the unskilled worker has carried with it automatically a proportionate advance to the skilled worker, although the Board has never said a word about anybody but the unskilled worker.[1]

South Australia. . . . Even so early as 1905, the Chief Factory Inspector said: "So far I have not heard of any case of leveling down of the higher paid workers, and the increased wages fixed for the lower paid hands has merely resulted, so far as can be seen at present, in a demand for more experienced workers." [2]

New Zealand. . . . In the main the Court has not endeavored to lift wages arbitrarily upon a wholesale plan, but has fixed minimums conditioned upon the prosperity of an industry as well as upon the needs of the worker. Consequently, the great bulk of wage rates has been fixed by the employers above the minimums of the Court.[3]

District of Columbia. . . . It is maintained that if an employer has to pay all his employes at least a certain wage he

[1] Committee of Enquiry into the Working and Effects of the Trade Board Acts, Minutes of Evidence, 1922. Quoted in the *Brief for the District of Columbia Case*, 1922, p. 496.

[2] Report of the Chief Inspector of Factories, 1905. Quoted in the *Brief for the Oregon Minimum Wage Law*, 1916, p. 648.

[3] See *Brief for the Oregon Minimum Wage Law*, 1916, p. 647.

will refuse to pay any of them more. The large percentage of workers in both the printing and the mercantile industries now receiving rates above the minimum effectually dispose of this argument.[1] . . . The figures show not merely a very substantial proportion of all workers rated above the minimum, but a tendency for this proportion to increase, and this in spite of adverse economic conditions—business depression and unemployment.[2]

With these widely scattered evidences introduced let us turn to the Oregon experience.

Rev. E. V. O'Hara, first chairman of the Oregon Industrial Welfare Commission, in his report, "A Living Wage by Legislation," in 1916, testified:

> The minimum rate of pay for the experienced adult workers was raised in all occupations. The per cent of the force receiving $12.00 and over increased after the determinations. . . . All experience under minimum wage legislation in the United States and abroad supports the same conclusion, namely, that to ameliorate the condition of the most poorly paid group of workers is to better the conditions of all. [Pages 15 and 16.]

The study previously referred to in which the United States Department of Labor investigated wage rates and earnings in 1913 just before the minimum rates went into effect, and again in 1914 just after they had gone into effect, is one of the best evidences as to the influence of the establishment of minimum rates upon higher levels of pay, since the interval of time involved occurs during a period when business conditions in Oregon were markedly unfavorable, a pronounced depression having set in. The reader is again referred back to chapter three for an analysis of conditions in Oregon during these years. The study shows that

[1] *Second Annual Report of District of Columbia Minimum Wage Board*, 1919, p. 26.

[2] *Fourth Annual Report of District of Columbia Minimum Wage Board*, 1921.

when employers raised the lowest paid minors to the legal minimum they "did not reduce wages of other minors to the minimum permitted by the wage determinations, but continued to pay wages as before on the basis of the value of the services rendered".[1] "About 28 per cent of the experienced adult women employed in Portland stores received less than $9.25 per week before the minimum wage determinations; 60 per cent received more than that amount. After the rulings had gone into effect there were 102, or 9 per cent of the total number, who were still receiving less than the legal minimum. The numbers receiving $9.25 per week had increased from 12 per cent to about 30 per cent of the total number, while the per cent getting more than $9.25 remained substantially the same." [2]

Not only are the wage facts gathered by the Department of Labor in the Oregon study indisputable proof that the minimum does not become the maximum, but every table of wages gathered by any agency gives the same testimony. This is true of the findings of the Power Laundry Investigation of 1914, table XV, of the Industrial Welfare Commission Study, 1917-1918, table VII, and the statistical material reported by the Oregon State Labor Commissioner, 1929, table XVII. It will be noted by these tables that in the case of every occupation there are many workers receiving wages materially above the minimum.

Table XII, summarizing all the data available for various years covering the wage distribution of employees in the mercantile occupations and table XIII, summarizing for laundry employees are particularly significant. In the case of the mercantile employees we have data somewhat indicative of wage conditions at four intervals since the first wage deter-

[1] "Effect of Minimum Wage Determinations in Oregon," *Bulletin No. 176*, United States Bureau of Labor Statistics, 1915, p. 20.

[2] *Ibid.*, pp. 22, 23.

TABLE XV. CUMULATIVE WAGE TABLE OF 726 WOMEN EMPLOYEES IN LAUNDRIES IN PORTLAND WORKING OVER 36 HOURS, CLASSIFIED BY WAGE GROUPS AND DEPARTMENTS [1]

Department	Total Number	Under $6.00	Under $7.00	Under $8.00	Under $9.00	Under $10.00	$10.00 and over
Office	35	..	1	2	3	7	28
Markers	105	..	..	1	10	20	85
Foreladies	15	..	..	..	..	1	14
Mangle	241	4	24	115	212	233	8
Starchers	57	1	6	12	26	34	23
Machine Ops.	71	..	1	11	28	48	23
Hand Ironers	77	2	10	26	43	56	21
Finishing Room	96	1	16	41	57	70	26
Seamstresses	8	..	..	2	5	7	1
Miscellaneous	21	1	2	6	15	19	2
Totals	726	9	60	213	399	495	231
Percent	99.4	1.2	8.2	29.0	54.6	67.8	31.6

minations. The cumulative per cents of those receiving above the minimum are the significant figures in this table. In 1913 before the minimum wage orders became effective there were 36.6 per cent of the employees receiving more than $9.25 which later became the minimum. In 1914 after the minimum had been ordered the per cent receiving more than this $9.25 had risen to 41.3 per cent. By the 1917-1918 study the per cent known to be receiving more than the minimum was 51.4. This is an extremely conservative figure for it includes only those receiving over $10, which is somewhat above the actual minimum at the time. By 1926 the per cent had risen to at least 64.6 although the minimum in the meantime had been advanced from $9.25 to $13.20. In 1927 the per cent was at least 61.7. The wage distributions for the laundry workers are not quite as easily compared as

[1] *Report of the Industrial Welfare Commission of the State of Oregon on The Power Laundries of Portland*, p. 39.

those for the mercantile employees because the units used for the classes were not as nearly identical. Nevertheless the tables are indicative of the conditions. In 1913 before the wage determinations 7.1 per cent were receiving more than $10 per week. In 1914 after the determinations went into force the per cent above $10 rose to 32.2. The minimum established was $8.64. In 1917-1918 the per cent above $10 was 37.8, a slight increase over 1914. By 1926 the per cent above $10 was 99.2 and that above $14, the nearest class unit above the minimum of $13.20, was 75.3. In 1927 this had risen slightly to 76.0 per cent. Even though the units used in the investigations are not identical the basic facts are so clear as to leave not the slightest doubt but that the minimum did not become the maximum. It is to be very much regretted that facts similar to those compiled for 1926 and 1927 by the State Labor Commissioner have not been continuously gathered throughout the years of the minimum wage experiment, since it would have been possible then not only to compute accurately the means, medians and modes but also to determine the degree of dispersion either by computing the standard deviation or some other of the measures of variation. Actual measurement of the degree of dispersion from year to year should give positive proof as to the truth or falsity of the claim that the minimum tends to become the maximum. Since for all the previous years only rough estimates of an average wage for various occupations are available, the averages are not really comparable and were not found usable in this study. Yet even though we do not possess data for every year there is enough to make certain that the charge that the wages of the better paid are reduced in order to raise the wages of the lower levels rests upon desire or very superficial observation and is almost entirely fallacious.

In his personal interviews and investigations into the

methods of Portland business men, the writer did, however, find a condition which evidently operates to lower the wages of some of the better paid, or at least to keep them from being advanced. The situation is this. It is the policy of certain store managers in planning the selling expense for the firm to set aside certain definite amounts for salaries in various departments. For example, to one department he will apportion $160.00 for salary purposes This sum may be divided as follows: $25, $35, $45, $55, according to the varying abilities of the four girls employed. After the establishment of the minimum wage with a set rate, let us say, of $10.00 per week this apportionment according to ability cannot be made, but each of the four girls will have to be paid $40.00 a month in order to comply with the law which requires that no one shall receive less than $10.00 per week. Obviously there will probably be a lowering of the wages of the better paid to meet the increase needed for the lower class. This business plan, which is found in many large mercantile establishments, is really a limited application of the old wages-fund theory, now, as already stated, discarded by economists, but for the sake of simplicity of management and for want of a truly scientific method still continued by some managers. This condition, however, affects only a limited number, workers in the majority of stores and manufacturing establishments not being under the same form of business policy.

With the exception of the special situation discussed in the previous paragraph the evidence clearly points to an actual spread in the rates of wages paid rather than to a tendency for the minimum to become the maximum. Probably the Minimum Wage Law cannot definitely be given the entire credit for this improvement. The place occupied by women in modern industry has been undergoing a marked change. They no longer fill merely the lowest paid jobs but have been

becoming rather active competitors with men for a much wider range of occupations and consequently are commanding an ever wider range of compensation. As time slips by and women occupy more and more permanently and competitively a place along with men, the minimum will no doubt take its place purely as a minimum. At first it may have seemed to some that it would be almost a standard wage, but certainly this is hardly true any longer and becomes more and more untrue. It is of course conceivable that an Industrial Welfare Commission might arise which would display poor judgment and set a legal wage so high that all the wage relationships would be disturbed and thrown out of joint, but as long as the wage set is truly on a reasonable minimum cost of living basis the dispersion of the wage rates of women as shown by the standard deviation will continue to approximate more and more nearly to that existing in the wages of men.

Regulation of piece rates necessarily accompanies regulation of time rates. The difficulties are more pronounced and the results less certain. The records are harder to keep and decidedly more meagre and less satisfactory. Inspection and enforcement are more complex; in fact, except in fruit canning, drying and packing little has been done except to formulate certain general principles to guide employers. The true status of the employee is harder to disclose also since the worker frequently suffers from greater irregularity of employment.

The first orders of the Industrial Welfare Commission even for manufacturing, made no mention whatsoever of piece rates, but in the wage orders of July, 1916, the following provision appears in the rulings for manufacturing and for laundries:

The average weekly wage rate for all women employed at

piece rates in any manufacturing establishment in the City of Portland shall be not less than $8.64, and at least seventy-five per cent (75%) of such employes shall be paid at not less than said minimum wage rate and not more than twenty-five per cent (25%) of such employes shall be paid at weekly wage rate of less than $8.64; provided, moreover, that after any woman or girl has been employed at prevailing piece rates for three weeks she shall then be paid not less than $6.00 per week, even if the amount earned at piece rates be less than that sum. In determining such average wage, a period of not less than sixty days shall be taken as a basis.[1]

No specification is here made of actual piece rates; this would be an endless task very unsatisfactorily done by the deliberative methods of administration provided for in the Oregon law. The intricate details of piece rates to be paid for widely diversified steps in production are matters for scientific management, though one is necessarily somewhat skeptical as to how much real scientific study has been put into the determination of equitable piece rates by management. The Industrial Welfare Commission has acted wisely, the author believes, in confining its rulings as to piece rates to laying down the broad principle stated in the above quotation. An employer will know that his specific piece rates comply with the law if they yield the minimum time rates to at least three-fourths of his employees.

In the occupations connected with fruit and vegetable preparation conditions are even more variable than in regular manufacturing lines, since nature complicates matters from season to season and adds variations in quality, quantity and time of handling to the variations which would ordinarily occur. One is staggered by the variations which would burden the work of a wage commission not only every season, but even within a season, for natural changes might

[1] Industrial Welfare Commission of Oregon, Order No. 10.

even necessitate reconstruction of piece rates during the course of a single season if full justice is to be meted out. The widely scattered nature of the fruit and vegetable industry likewise makes inspection more difficult. Another fact about fruit and vegetable preparation which adds to the delicacy of the task of administering a wage and hour regulation is the "emergency" character which comes over it from time to time. Weather conditions, shortage of the supply of laborers and other situations frequently give rise to a plea of "emergency," a plea perhaps fully justified, and a desire to work overtime, late hours, at night or otherwise in violation of rulings. "Emergencies" are difficult, indeed, to deny. One of the most recent developments adding burdens to the task of enforcement is the coming of the "tramp worker," the so-called "Ford tramp". These are floaters who drift into an orchard, hop yard, cannery, packing or drying plant, work a day or two and are gone again. Enforcement of the law is of course all but impossible, and in fairness to the employers be it said that the presence of these "Ford tramps" immeasurably adds to their own difficulties of management.

In setting the specific piece rates, which cover only a very small part of the range of tasks in the entire fruit and vegetable preparation industry, the Oregon Commission followed rather closely the rulings in California, where the most extensive investigations and hearings had been held. Table XVI gives the last piece rates issued for the fruit industry. After determining certain specific piece rates the Commission followed its method used in the manufacturing and laundry occupations of specifying that the rates must yield certain minimum hourly rates, for the experienced worker 27½ cents per hour, for inexperienced 22 cents. The rulings of Order No. 47 very greatly modified the earlier ones in adding to the statement of the hourly minimum the clause that

TABLE XVI. FOR PACKING, DRYING, PRESERVING OR CANNING ANY VARIETY OF PERISHABLE FRUIT OR VEGETABLE

(I. W. C. Order No. 47, as amended March 31, 1922) [1]

No person, firm or corporation shall employ or permit any woman or minor to work in the fruit and vegetable packing, drying, preserving, or canning industry in Oregon in any of the following occupations at wage rates less than the following:

I. Piece Rates

Occupation and Variety	Minimum Piece Rates
Cutting apricots	38¼c. per 100 lbs. (or 15 3/10c. per 40 lbs.)
Cutting pears	67¾c. per 100 lbs. (or 25½c. per 40 lbs.)
Cutting cling peaches	38¼c. per 100 lbs. (or 15 3/10c. per 40 lbs.)
Cutting free peaches	21c per 100 lbs. (or 8½c. per 40 lbs.)
Cutting tomatoes	5 1/10c. per 12 qts.
Quartering apples	15 3/10c. per 40 lb. box
Hulling strawberries	1 7/10c. per lb.
Stemming cherries	2/5c. per lb.
Sorting and stemming cherries	½c. per lb.
Sorting and stemming string beans	1 1/5c. per lb.

	Size of Can	Minimum Piece Rate per dozen
Canning apricots, pears, peaches	No. 2½	2½c.
Canning apricots, pears, peaches	No. 10	6 1/10c.
Canning apples	No. 10	3 c.
Canning strawberries, loganberries, blackberries, raspberries, cherries	No. 2	1 7/10c.
Canning strawberries, loganberries, blackberries, raspberries, cherries	No. 2½	2 1/8c.
Canning tomatoes	No. 2½	1 7/10c.
Canning tomatoes	No. 10	4 c.
A uniform basis for facing prunes in 25 lb. boxes, double-faced, of	..	5 1/10c.

II. Time Rates

Class	Minimum Time Rate
Experienced workers	27½ cents per hour
Inexperienced workers	22 cents per hour

[1] *Eighth Biennial Report*, p. 14.

this hourly minimum must be earned by at least fifty per cent of the workers and that the record over any period of sixty days would be the criterion of obedience to the law. This specification shows the influence of the California rulings, which from the first had required the piece rates to yield the minimum hourly rate only to fifty per cent of the employees. The seeming laxity of this provision is somewhat, though not entirely, compensated for by the phrase which declares that any employee shall be regarded as an experienced worker after three weeks, with a limit of one week where work is continued on certain specific fruits and vegetables.

Control over piece rates has gone only about far enough to unearth some of the problems and demonstrate the complexity of the task.

What protection, if any, is thrown around the woman's wage, insuring that she shall receive the sums earned by her? Not infrequently a woman has difficulty in collecting even the few hard-earned dollars to which she is entitled, as the complaints made throughout the years reveal. The law requires the cooperation of the Industrial Welfare Commission, Child Welfare Commission and State Labor Commissioner in the enforcement of the law. Very close harmony especially exists between the first two since they have a common secretary, who is in reality the heart of the enforcement policy. The law makes possible adequate inspection by these agencies through granting access to plants, access to books and other requisite powers, but appropriations have always been too meagre to provide any except the most limited and inadequate inspection. The result is that while the law authorizes civil action to recover wages due to a woman and criminal prosecution for violations of the law the actual administration has been limited largely to voluntary complaints and voluntary settlements.

In its Second Annual Report the Industrial Welfare Commission says, "While there have been individual cases of violation of the rulings, the Commission is able to report that such infractions have been exceptional and the violations, *where evidence could be secured,* have been successfully prosecuted." The phrase which is here put in italics is the key to the enforcement problem. Evidence is difficult to get.

Repeatedly the Industrial Welfare Commission has appealed to the legislature for a full-time field worker. This was once granted so far as salary was concerned, but the budget of the Commission was so cut in other ways as to leave such a small amount available for traveling expenses that the field worker could be utilized only about one-half of the time needed. Comparatively little difficulty has been experienced in enforcing the act and securing the minimum wage for the women in Portland, but there are large areas throughout the state never visited at all by a representative, and in these areas there is often entire disregard of the Commission's rulings either through complete ignorance of the law or the belief that the law is a dead letter since those concerned never see the Commission or its officials.

One of the chief factors giving a wealth of meaning to the phrase "where evidence could be secured" is the common reluctance of employees to complain or testify. This reluctance is understandable; fear of losing one's job is too vivid and real to be discounted. Very frequently the complaint comes as a telephone call from an employee who refuses to divulge her name. She often accompanies her anonymous complaint with the suggestion that the officials of the Industrial Welfare Commission go down and "hang around" a certain establishment and they will then see how the law is being violated. While such complaints might be of some service in giving clues to inspectors they are

obviously no grounds for prosecutions and, it must be noted, are occasionally maliciously lodged by disgruntled employees. Where employees refuse to divulge their names, will not state specific charges and in some cases will not even go to the offices of the Commission, it is difficult to see how they can expect personal redress for the wrongs, yet it is this very group that most persistently circulates the statement that, " It's no use making a complaint to that office; nothing is ever done."

It has been the policy of the Commission to settle all wage cases possible out of court without any drastic action, a policy which has commanded the tolerance, respect and cooperation of employers. When complaints are made both parties are called in, the matter is talked over and almost without fail the wage adjustment is made. This conciliation method elicits the largest possible measure of cooperation from all concerned and minimizes greatly the antagonisms and the costs which would be created by court actions. The very heart of this policy of peaceful settlement is necessarily the paid secretary of the Industrial Welfare Commission, who has always occupied an extremely strategic position and has made possible an intelligent administration of provisions peculiarly difficult because of the truth implied in the phrase " where evidence could be secured ".

In harmony with the general enforcement policies certain precautions have been necessary to prevent exploitation of special groups of employees. In hotels, restaurants and similar establishments women are sometimes given room and meals as part of their wage. Opportunity is here offered to obey the letter of the Minimum Wage Law, while really paying less by charging large sums for meals and room. To protect the employee's wage the Industrial Welfare Commission has specified the maximum which can be charged for meals and room.[1] Advances in these charges allowed were

[1] Industrial Welfare Commission of Oregon, Order No. 45, section 5.

made approximately proportional to the advances in the specified minimum wage, but the charges were not placed at quite as high a percentage of the minimum wage as the per cent allowed for board and room in the budget studies. This limitation on the amount charged a woman out of her wage serves greatly the women above the minimum as well as those at the minimum.

An exploitation of employees developing since the first rulings is the charge levied against women and girls for "learning the trade". "Schools of Beauty Culture," "Candy Colleges" and so on have sprung up, in many of which women and girls actually pay a "tuition" for the privilege of working for an employer. Very soon these "students" are turning out a merchantable product which competes with that of employers running legitimate enterprises and paying at least the legal wage. Legislation is needed to bring this type of exploitation clearly under regulation. The energy and shrewdness of those administering the Minimum Wage Law have succeeded in ending some of this abuse, even going so far where sufficient evidence could be secured as to require the return of part of the tuition. The ruling of the Commission touching this abuse is found in Order No. 36:

In occupations where a charge is made for teaching, the minimum wage for apprentices shall be paid over and above such charge, and a deduction of the teaching fee from the minimum wage required for the learner shall be a violation of the wage order governing such occupation; provided, however, that the Industrial Welfare Commission will grant a permit upon application to employers in towns where no vocational training school is conducted, whereby the employer may deduct from the minimum wage for apprentices a charge for instruction in the shop for a specified time, which charge must be

satisfactory to the apprentice, and must be approved by the commission.[1]

Finally, a word of inquiry may well be directed to the effect of the adverse decision of the courts in the District of Columbia cases upon the wage determinations in Oregon. The law is still potent in spite of the vote of the Court. The legislature still continues the money grants necessary to carry on the work of the Industrial Welfare Commission. There have been no readjustments and no prosecutions, just a tacit assumption that the law exists. There are those who have maintained that the whole upward trend of wages has prevented any desire on the part of employers, or any ability indeed, to drop to levels below the minimum. Although there is much truth in this, inspection of table XVII, page 152, which gives the wage distribution for the years 1926 and 1927, reveals the unmistakable influence of the wage rulings. Not in all of the frequency distributions, but in those where the numbers employed are greatest, the class $13.00 to $14.00, which includes the $13.20 minimum wage, shows a most striking increase over the classes just preceding and this in spite of the fact that the inexperienced women could legally be paid less than $13.20. The Oregon wage rulings still exert an influence over the actual rates being paid.

[1] Industrial Welfare Commission of Oregon, Order No. 36, section 4.

	1926		1927		1926		1927		1926		1927		1926		1927		1926		1927		
	Fruit, Vegetable and Fish canning and packing				Biscuits, Confections and paste products				Wearing App Knitted G				Groceries				Music and Book Stores				
	Adults	Minors	Adults	Minors	Adults	Minors	Adults	Minors	Adults	Minors	Ad	Minors	Adults	Minors	Adults	Minors	Adults	Minors	Adults	Minors	
Under $6..	12	11	176	34								1	1		3						Under $6
6–7	28	3	79	6									2		2						6–7
7–8	25		99	12								1	1								7–8
8–9	35		116	17					8			8	2		1						8–9
9–10	28	4	330	21	10	2	68	4	62	2		12	2		1	1	9		6		9–10
10–11	97	11	176	25	83	18	39	5	39	2		24	1			1					10–11
11–12	240	24	309	29	6	2	2		16	2		12	3		4		16				11–12
12–13	227	16	333	31	34		43	1	115	3		13	4		24	1	3		17		12–13
13–14	634	22	711	48	83	5	82	1	101	2		4	13		9		11		11		13–14
14–15	669	9	665	40	33	1	17	1	95	2	1	5	1				1				14–15
15–16	230	14	291	22	24	1	34	2	77	6		1	32		16		11		35	1	15–16
16–17	310	52	574	61	18		27		97	2	1	1	19		47		4		5		16–17
17–18 ...	154		371	4	19		15	2	76	6					2		5		7		17–18
18–19 . ..	400		224	6	40		26		157	7	1		9		7		10		8		18–19
19–20	125		217		12		18		48	2			3		3		8		12		19–20
20–21	117		90		21		14		130	4	1	1	6		17		4		6		20–21
21–22	137		221	3	15		10		36	1			1		2		5		4		21–22
22–23	58		60		8		13	1	42	1			2		3				1		22–23
23–24	69		41		2		7		48	2							8		8		23–24
24–25	80		165		13		6		54	1			3		25	1	1		4		24–25
25–30	79		122		1		9		87	1			2		4		5		9 7		25–30
30–35	166		155		2				51				1		3		8		1		30–35
35–40	21		15		1		1		25				2		4						35–40
40–45	5		8						15						1						40–45
45–50	6		6												1						45–50
50–55									5						9						50–55
55–60 ...													1		1						55–60
60–													1		1						60 and over

CHAPTER XI

Regulation of Hours and Working Conditions

In common with many other minimum wage laws the Oregon legislation gave to the Industrial Welfare Commission control over hours and working conditions as well as minimum wage rates. The declared purpose of the act was to protect the lives and health and morals of women and minor workers, and in such protection hours and working conditions play a vital part, a part almost if not fully as important as that played by the wage rate. Realization of the baneful effects of unduly long hours led the legislature to give the Commission authority to regulate them. But there is a second relationship between hours and minimum wage rates which has not been so self-evident, in fact seems not to have been realized even by the wage commissions until after they began actual determinations of rates. To the extent that hourly rates are determined or allowed for, the number of hours per week becomes one of the two factors determining the weekly minimum wage. Obviously it is the weekly earning, not merely the hourly rate, which affects the standard of living the woman is able to maintain.

Oregon has formally dealt with the problem of hours in two ways. She passed the ten-hour law which successfully withstood attacks and was sustained by the United States Supreme Court in the famous case of Bunting *v.* Oregon, 1908. This legislation simply recognized the evil of long hours. Then into the Minimum Wage Law the following provisions were written governing the question of hours:

It shall be unlawful to employ women or minors in any occupation within the State of Oregon for unreasonably long hours. Section 1.

Said Commission (Industrial Welfare Commission) is hereby authorized and empowered to ascertain and declare, in the manner hereinafter provided, . . . (a) Standards of hours of employment for women and for minors and what are unreasonably long hours for women or for minors in any occupation within the State of Oregon. . . . Section 4.

Acting upon the authority conferred by the law the Industrial Welfare Commission has established by its latest rulings nine hours as the basic day for adult women in all occupations under its control and as the basic week forty-eight hours. The earlier rulings had permitted a fifty-hour week for mercantile establishments, fifty-one for offices and fifty-four for manufacturing and other occupations. It is interesting that the hours permitted per day in mercantile work had been eight hours and twenty minutes but that this was extended to nine hours when the week was shortened to forty-eight hours. These arrangements thus established the forty-eight hour week and yet allow some spread as to the hours per day, especially when as noted below some overtime is permitted under due precautions. For minor girls the first ruling established a basic day of eight hours and twenty minutes and a week of fifty hours. Later orders have differentiated between minors under sixteen years of age and those between sixteen and eighteen, providing that no one shall employ any minor boy or minor girl under sixteen years of age more than eight hours per day and no minor girl from sixteen to eighteen years of age for more than nine hours per day and forty-eight hours per week.[1]

Two exceptions to the nine-hour day may here be noted which reveal the flexibility of the provisions as to hours and

[1] Industrial Welfare Commission of Oregon, Order No. 46.

the willingness of the authorities administering the law to adjust orders to the needs or best interests of all concerned. The orders issued effective September 1, 1916, setting nine hours per day and fifty-four hours per week for manufacturing concerns, specifically exempted woolen mills. This was the result of much pressure exerted by the women themselves as well as the employers, many of whom wished to retain the ten-hour day with a half-holiday on Saturday. The half-holiday could have been granted by employers even though the basic day was cut to nine hours, but this does not seem to have been seriously considered. When the new rulings were issued making the basic week forty-eight hours and allowing the spread up to nine hours per day the necessity for an exception in order to retain a half-holiday no longer existed and the exemption of woolen mills was removed.

The second interesting point of flexibility is found in the telephone rulings. There are many smaller exchanges where adjustment to an eight- or nine-hour day is difficult and where, especially in the case of rural exchanges, the service does not call for continuous work. These special conditions are cared for by the following section of the orders of the Commission:

> Upon application and showing, the commission may upon such terms as it deems proper, release any applicant, employing less than 10 operators, from compliance with rule number four.
>
> Any rural telephone establishment of limited service which does not demand the uninterrupted attention of an operator, may obtain, upon application and showing before the commission, a special license for the employment of operators for wages and daily hours different from those required by the above order; such wages and hours must be satisfactory to the employe as well as to the employer and be approved by the commission.[1]

[1] Industrial Welfare Commission of Oregon, Order No. 43.

Unless it is guarded against there will be women who will violate the clear intention of the hours regulations by accepting a second employment with another employer after completing a day's work with a first. This would clearly be contrary to the conviction expressed in the legislation that longer hours than those stated in the regulations are injurious to the health of the workers. To prevent this violation of the spirit of the law provision is made that no woman or minor who has been employed by one employer in any occupation in any one day shall accept employment later in the same day from any other employer for time sufficient to make the combined hours of employment for such day exceed nine hours.

Woven into the question of hours per week is that of one day of rest in seven. When the initial discussions came as to the wisdom of providing for a six-day week there arose of course a vigorous protest from certain employers whose business required continuous operation. The various lines of public housekeeping and telephone and telegraph work together with the railroad companies are the chief of these. For all of the regular occupations the orders issued have required that women be not employed for more than six days in any one calendar week. In the case of public housekeeping occupations, which include the work of waitresses, attendants at ice-cream stands, etc., chambermaids, janitresses, car cleaners, kitchen workers and elevator operators, the orders are simply silent as to the number of days which they can work per week. Telephone and telegraph operation presented quite a problem in the light of the continuous service necessary. For the telephone occupation it was finally agreed that no women would be worked more than six days per week in Portland since schedules of work could be adjusted to meet this, and that outside of Portland throughout the State no women could be employed for more than fourteen con-

secutive days without one full day of rest and one day of not more than six hours' work. It was provided, however, as noted above, that upon proper application and showing the Commission could, upon terms which it might provide, release any applicant employing less than ten operators from compliance with these regulations. The telegraph occupation because it employs fewer women and because of the competition with men who could work seven days per week was in a different position, and the orders covered this case simply by providing that no women should be employed for seven consecutive days without allowing one day during which the hours of employment should not exceed six.

The flexibility of the rulings of the Commission, the common sense and moderation shown in their administration, is well revealed in the exceptions in the six-day week allowed for ticket clerks. During the war the railroad companies were compelled to employ large numbers of women to fill the positions left vacant by men going into the service. Women were found in all departments of railroad service, but at the end of the war were retained principally in the offices. There had been a question raised as to the jurisdiction of the Industrial Welfare Commission over railroad employees but the United States Railroad Commission had decided in favor of the Oregon Industrial Welfare Commission. These women railroad clerks came under the jurisdiction of Order No. 44 covering office occupations, and this order required one day of rest in seven. The women all belonged to the unions and could not be discharged from the service, yet the men in the same groups were objecting to a seven-day week while the women were enjoying a six-day week. The complications injected into the problem by the unions and by the competition of men are here clearly evident. Women desired to remain in the trades; the rate of pay was high, the women had become skilled and liked the work. It so happened that in

each case the ticket clerk was a woman obliged to support herself, in many cases having others dependent upon her, whose best interests seemed to require that such adjustments be made as would enable her to retain her position. The railroad companies maintained that conditions would not warrant the putting on of a relief worker so as to provide the one day of rest required and so notified the women that unless the Industrial Welfare Commission would rescind its six-day order their positions would be filled by men and as the union rules forbade the discharge of the women they could make application for any six-day positions which might become vacant. This of course placed the next move upon the women employees who at once petitioned the Commission for abolition of the six-day ruling. It would have been easy in this case for the Commission through a stubborn attitude to have aroused the bitter enmity not only of employers but also of the employees. Without formally changing the order the Commission applied moderation in its administration by granting permits to the railroad companies applying, allowing them to employ women seven days per week. While these permits have continued regularly they have been carefully guarded and would seem to be in the best interests of the women employees to whose welfare the administration of the law is really directed. They have made possible a desirable flexibility.[1]

What shall be done about rest periods? Three provisions have found their way into the orders providing regulation as to the rest periods which must be given to women and minors. The first, that which requires at least a forty-five minute lunch period, shows how difficult it is to be sure that the regulation passed is really in the best interests of the women whom it is intended to aid. Many contended that

[1] See *Fourth Biennial Report of the Industrial Welfare Commission of the State of Oregon*, 1921.

in order to provide adequate rest and relaxation and best to preserve health the lunch period should not be less than one hour in length. On the other hand many women earnestly desired a half-hour lunch period so that the day's work might be ended at an earlier hour and more time be allowed for their evenings. It was contended by many of them that the extra half hour would mean more to them when consolidated with other free time after work hours than when put into the noon hour which in many cases could not be properly spent at factories or other places of work. When one considers the conditions under which the noon hours must often be spent one can clearly appreciate the position taken by the women. Scientific solution of this problem must wait for more careful studies of the effect of various lunch periods upon fatigue, health and efficiency. Perhaps this problem of a noon rest period may be solved ultimately by still further shortening the hours of work and giving more attention to the importance of the number of hours of rest, recreation and consumption. It is certainly conceivable that employers as a group may finally become as much interested in longer hours for consumption which will create an enlarged demand for products as they are in the hours of work for production. The second provision for rest periods is the requirement that no woman or minor can be employed for more than six consecutive hours without a rest period of at least forty-five minutes. The third is designed to prevent throwing day shifts and night shifts too close together for any one woman and specifies that no person shall employ any woman or minor girl on two successive days without an interval of nine hours rest between such days. This is all that has been done as to rest periods except that the Commission has made an informal suggestion to employers that they consider the value of occasional twenty-minute rest periods.

Night work is more or less undesirable for any worker, man or woman. The first moves were unquestionably to limit very severely the employment of women at night as particularly undesirable. However, the rapid introduction of women into such a wide variety of occupations, their clear competition with men in many cases, put a different light upon the problem. In many lines some night work may be necessary, and it becomes a case of weighing the advantages of a wider range of occupations with some night work against a more restricted field of employment and day work exclusively. Here again it is a case of the problem solving itself perhaps by scientific studies of the effects of night work upon both men and women, which studies may lead employers voluntarily to reduce the number of hours of night work to the lowest possible minimum. There may of course be a few types of work particularly dangerous for women at night where experience may finally rule them out altogether just as there are a few occupations physically so exhausting or dangerous to women's physique as to lead to her complete exclusion from the trades.

The moderation of the Commission in the administration of the law is again shown in the flexibility given to the regulation of this night work. Where the work can clearly be done without night hours the orders so specify. For example, 6 P. M. is the latest hour at which women can be employed in Portland mercantile establishments except in cigar stands in hotels and in confectionery stores. Outside of Portland the closing hour is set at 8:30 P. M., thus yielding to the necessities of custom and conditions in smaller trading centers. Manufacturing and laundry establishments throughout the entire state are definitely limited to an 8:30 P. M. closing hour, and this order includes along with all regular factories, " the work performed in dressmaking shops, and wholesale millinery houses, in the workrooms of retail millinery shops,

and in the drapery and furniture-covering workrooms, the garment alteration, art needle work, fur garment making, and millinery workrooms in mercantile stores, and the candy making department of retail candy stores, and of restaurants ". Specifically by special act of the legislature fruit and vegetable drying, canning, packing and preserving establishments are removed from the control of the Industrial Welfare Commission so far as hours of work are concerned and so are not included in the scope of this ruling. For personal service, which includes ushers in theaters, for telephone and telegraph operators and for public housekeeping employees the 8:30 P. M. limit does not apply. The employment of women elevator operators, classed in the public housekeeping group, is forbidden after 11:00 P. M.

The limitations placed by the orders of the Commission upon the hours of work created much disapproval on the part of cannery employers. A separate conference was held in September, 1914, which recommended that the limit in hours per week should be the same as for manufacturing establishments except that for four weeks each year, which would cover the legitimate emergency period, adult women might be employed longer, but no more than 10 hours per day, which is the upper limit allowed by the Oregon ten-hour law. This conference also recommended that in case women were employed more than the fifty-four hours in one week they should be paid time and one-half for all overtime. Public hearings were held upon these recommendations but no orders were issued by the Commission. Cannery opposition proved to be extremely strong, and at the 1917 session of the Oregon legislature the length of hours of work in fruit and vegetable preparation was taken entirely out from the control of the Oregon ten-hour law by the enactment of a provision which sets no limit upon the number of hours which women can be employed in harvesting, packing, curing, canning or drying

any variety of perishable fruit, vegetable or fish. The only possible limitation is the provision that time and one-half shall be paid for all work done, either on a time-wage or piece-wage basis, after a ten-hour day.[1] This clearly places canneries virtually beyond limitation and in fact establishes a basic ten-hour day in the industry. The only possible justification for this rests in the seasonal characteristics of the work and the emergencies which arise. Without doubt, however, the industry needs some stimulus to regularize itself as much as possible, and the moderation with which the Welfare Commission has administered the law in all other cases makes one quite certain that the emergencies of the fruit industry would have been adequately taken care of by emergency permits.

Reference has been made at several places to emergency permits. A word should be said here regarding the general provisions as to emergencies. At the 1915 session of the Oregon legislature an amendment was added to the Minimum Wage Law by inserting into the section authorizing the orders of the Commission the following clause:

> Provided, however, that in cases of emergencies which may arise in the conduct of any industry or occupation overtime may be permitted under conditions and rules which the Commission after investigation shall determine and prescribe by order and which shall apply equally to all employers in such industry or occupation.[2]

This amendment has been of great value, making possible the flexibility in the administration of the law which is so necessary if a reasonable amount of satisfaction with the legislation and cordial cooperation from employers is to be secured. The above amendment was generously used by

[1] *Amendment to the Oregon Minimum Wage Law*, 1917.

[2] Included in Section 9 of the Minimum Wage Law.

employers and it became necessary to safeguard it, which was done by adopting the following definition of an emergency:

> Said emergency to be interpreted as a situation which requires the overtime work requested by the employer in order to prevent suffering or distress on the part of the consumer or general public. That an emergency shall not be interpreted as existing when it is merely a matter of trade convenience.[1]

The Industrial Welfare Commission in its Seventh Biennial Report states that it has not always been an easy matter to satisfy the employer as to the distinction between the "distress of the consumer or the general public" and a trade convenience. The Commission has always held that the welfare of the employees is the first consideration and so safeguarded the permits that their number has been kept down within reasonable limits. During the war period there was much pressure upon the Commission to remove its restrictions upon night work and number of hours. Great advantage was taken of the plea of war emergency; claim was made that the restrictions were interfering with war production. To ascertain the facts an investigation was ordered which covered forty-seven industries, out of which forty-one firms employing 98 per cent of the workers in the industries visited reported that the then existing rulings were not working any hardship on their business. The report of the investigator includes the following statement which summarizes the position taken by the Commission:

> Certainly when forty-one industries out of forty-seven employing ninety-eight per cent of the workers reporting, state without any qualification that the present law with regard to the employment of women is not working a hardship on their business, there seems little justification for a change in the law, par-

[1] *Seventh Biennial Report of the Industrial Welfare Commission of Oregon*, 1927, p. 5.

ticularly since there is a certain flexibility in some occupations under the present law.[1]

While considerable criticism has been offered from time to time of the large number of overtime permits granted, the criticism would hardly seem to be justified, since most of them have been for such emergencies as breakdown of machinery, destruction of plant by fire, unusual and unforeseen demand and stock taking. The largest number are issued at inventory-taking time, when it is evident that untried workers cannot be called in for such tasks, and the permits are issued when requested. Holidays in the week always bring the request for permits in some industries where the usual amount of work must be cared for and new workers do not easily fit in in the emergencies. A check-up on the use of the permits is secured by requiring from every employer full and complete reports on the overtime worked by any woman in his employ. Extra payment at a time and a half rate is required, which provides some further restraint on undue use of overtime. While considerable overtime has been permitted it is fair to say that it has been kept within reasonable bounds and has constituted a highly desirable flexibility in the administration of the law.

Virtually all of the facts brought out in the preceding discussion have been phases of the problem of hours as they affect the health of the women employees, but as pointed out in the opening paragraph of this chapter there is a second important relation of hours to the Minimum Wage Law in the bearing which the hours worked have upon the earnings of the workers. Here the concern is not with the amount of overtime but with the amount of undertime. If the minimum wage is set for a basic day of forty-eight or fifty-four

[1] *Third Biennial Report of the Industrial Welfare Commission of Oregon,* 1919, p. 6.

hours and then the woman is given work for only thirty or thirty-six hours she actually receives far below what is set as the minimum necessary for a decent living unless some special provision is made for her case.

The difficulties of undertime seem not to have been realized until the Commissions in the various states began making rulings, when the distinction between the minimum wage rate based on a full week's work and the actual earnings of an undertime week became real. No complete solution of the problem has yet been found in any state. California has gone the farthest by giving a spread to the hours of the week that shall be regarded as full time and by making a minimum hourly rate for part-time work which is higher than the rate for full-time work, thus penalizing the employer who does not provide his workers with full-time employment. Thus far in Oregon nothing has been adopted even recognizing the difficulty except the following provision:

> When business conditions render it impracticable for an employer to furnish to any employee full time employment, the employer shall not be required to pay such employee any greater sum than the hourly wage for the number of hours of actual employment, provided such employer shall so arrange consecutive hours of continuous employment that each employee may have a fair opportunity for securing such employment as will enable her to earn a full week's wage.[1]

Fairness to the industry as well as to the woman would seem to require a general regulation approximately like this in Oregon, though a provision for a somewhat higher wage rate where the work is only part time would operate as a stimulus to the managers to regularize their employment as much as possible, and would compensate the women at least partially for the trouble and probable loss involved in shifting from

[1] Industrial Welfare Commission of Oregon, Order No. 36, section 3.

one task to another in order to complete a full week of work. This must be recognized as a part of a much larger general problem in industry, that of regularizing and steadying the whole field of production and providing for the unavoidable costs incident to unemployment which exists either because of conditions uncontrollable or because of conditions which are uncontrolled through failure on our part to get at the facts or to analyze them. Even when we apply our full intelligence to the problem there will no doubt be some necessary undertime, the evil effects of which could probably be reduced to a minimum by provisions such as are suggested above.

The clause in the Minimum Wage Law which makes it unlawful to employ women or minors under such surroundings — sanitary or otherwise — as may be detrimental to their health or morals confers upon the Industrial Welfare Commission very broad powers. There are, of course, certain general factory regulations in Oregon governing safety appliances, lighting and ventilation, but the orders of the Commission have supplemented these in many ways. One entire order is devoted to what is called a " sanitary code ", though along with regulations as to cleanliness, drinking water, ventilation, washrooms and toilet facilities it carries provisions for lighting, adequate dressing rooms, and the use of tables and seats wherever the work makes such possible. A great deal of time has been devoted by representatives of the Commission to the study of sanitary and moral conditions in hop yards, berry fields, orchards and in packing houses for fruits, vegetables and fish. Special provision has been made in the orders for sanitary conditions as to drinking water, garbage disposal and toilets. The Commission has made frequent inspections through a representative in so far as finances would permit and is able to report a general cooperation of the employers with the purposes of the rulings and a

rather steady improvement of conditions. One of the most valuable moves which could be made by the Oregon legislature would be to invest a little money in more complete inspection. Funds for the salary of such inspectors were once provided but the general budget was cut to such an extent that full advantage could not be taken of the salary appropriation due to the shortage of the expense funds.

Into the problem of sanitary conditions almost more than into any other of the conditions is injected an extremely human element. Frequently human beings simply will not keep things clean. Employers justifiably complain that occasionally no matter what careful preparation is made for the comfort and cleanliness of the workers, especially in the hop-yards, berry fields and orchards, no attempt is made on their part to maintain any standard of decency. Straw for clean bedding is provided one day and found the next scattered all over the place. Garbage is thrown all around, toilets are not kept clean, tables and chairs are split up for fire-wood, to save the campers from walking a short distance to the wood-pile. In some cases this condition has been aggravated by the increasing presence of a recently developing type of worker, previously referred to, who has been called the "Ford tramp". This Ford tramp with his family moves from place to place with the seasonal work and according to the employers is really not a profitable worker. He is irresponsible, cannot be depended upon to stay on the job, and his family proves undesirable. He frequently remains only two or three or a very few days in one place and then is gone again. While conditions in the factories are hard enough to control, it is evident that the places where these transient groups congregate challenge unusually careful thought.

A condition over which the Industrial Welfare Commission has no control but which should receive the careful at-

tention of the school authorities is produced by this travelling population. Frequently the children in these families receive little or no schooling during the course of the year. They are hardly permanent enough for the school authorities even to know they are present unless careful watch is kept for them. Rather naturally the local authorities feel little or no responsibility for them. The problem is one quite different from the old " Hobo " problem, for with the automobile it is the entire family which is now on the road.

Finally, there is one other phase of the industrial problem of women about which a word should be said. It can be only a tentative word because our convictions are still very much in a state of flux. Sufficient information is not yet at hand to give us the necessary facts upon which to base our conclusions. This is the question as to whether there should be certain industries from which women should be altogether excluded. Custom of course formerly barred women from many occupations. The war accelerated the breaking down of these customs and traditions and it is now a matter only of a short time till women will enter all industries unless other grounds than custom are found for the restrictions. During the war women freely entered work as elevator operators, mail carriers, on delivery wagons, in shipyards, in brass foundries, in railroad yards, as freight truckers, scrap iron sorters, as section hands, engine wipers and hostlers. Should this be permitted or should they be barred from these tasks long regarded as typically the work of men? No final answer was given at the time, only an emergency answer; women were eager to remain in the new tasks, many of which proved more agreeable to them than the fields of work long assigned by custom to women. Moral and physical hazards will probably be the ruling consideration now that custom has been practically overthrown. Thus far Oregon has made only one ruling completely barring adult women from any

occupation, and that is found in the telephone and telegraph orders in the section which declares that no woman shall be employed as messenger in the telephone, telegraph or public messenger service.[1] Convictions as to the undesirability of certain types of work have crystalized a little more in the case of minors, who are now completely excluded from any work in or in connection with any lunch counter, restaurant, cafeteria or hotel in the State of Oregon if said minor is under sixteen years of age, and from any work in connection with any lantern or lantern room of any motion picture theatre or in connection with the operation of any motion picture lantern in any public building if the minor is under the age of eighteen. All minor girls are excluded from any form of messenger service and are not permitted to act as canvassers or peddlers from house to house, or to work in connection with any barber shop where men are customers.[2]

Thus, while the control over general conditions of work conferred upon the Industrial Welfare Commission is sweeping in extent, the state of flux in the position of women in industry has been so great that the Commission has felt it necessary to make its moves with caution. As indicated above, the Commission has granted many emergency permits, especially for overtime, for which it has been subjected to considerable criticism. It may be that the problem could have been handled in a more clear-cut way, yet it must be said for the Commission that it is dealing with a very real and practical situation. War-emergency pressure, political pressure and threats of repeal of the law had to be met. As stated previously, cannery men even succeeded in removing their industry from the jurisdiction of the state ten-hour law. In the light of the practical dangers to the act caution was called

[1] Industrial Welfare Commission of Oregon, Order No. 42, section 7.

[2] Industrial Welfare Commission of Oregon, Order No. 46, sections 13-16.

for in order that favorable employer sentiment might be carried along until the real merits of the measure had time to commend themselves without question to the business world. Support is now sufficiently cordial to permit the Commission, should it deem this wise, to make fewer exceptions than formerly, provided that the constitutional objection were removed and positive enforcement restored. Another factor, however, demanding very thoughtful decisions is the competition of men with women. The Commission must make its requirements with due moderation in order that the position of women in industry may not be so hampered with restrictions that the employment of men rather than women will be found profitable and women lose their newfound places in a wide variety of trades. This of course assumes that it is desirable for women to be a permanent part of the industries into which they have entered in recent years, an assumption that may tentatively be made although the final decision must wait on some years of experience. Urgent practical considerations involving the life of the Minimum Wage Law and the competitive place of women thus necessitate cautious procedure. It is to be hoped, however, that further moderate regulations will continue to be made as to the conditions under which women will be permitted to work, since improved conditions for women workers are reflected in improved conditions for men as well. In many cases the improvements for women involve at the same time improvements for men since they work in the same factories under the same conditions; in other cases the betterments required in the case of women come to be demanded by men also. While the Commission must be cautious in its moves it has in this part of its jurisdiction the opportunity to make steady progress and to contribute much to the welfare of all workers in Oregon industry.

CHAPTER XII

Problems of Apprenticeship

INEXPERIENCED ADULTS AND MINORS

The problem of the inexperienced worker, both adult and minor, constitutes what has been called the "sore spot" in industry. Very little that is satisfactory has been developed in the methods of controlling these workers; in fact, the entire problem can best be described by saying that it is in a state of great confusion. A brief survey of the methods of the various state commissions charged with the task of making the apprenticeship regulations, the provisions as to wage rates, length of learning periods and other phases of the problem shows the great confusion in the minds of the commissions themselves. The variations in their decrees, not only from state to state but even within a single state, are so great as to challenge one to find any underlying principles which have been applied.

This general confusion is not to be blamed upon the state commissions but is the logical result of the conditions of modern industry, conditions which cannot be tossed to one side by the commissions but must be frankly recognized and to which the decrees must be adjusted. The introduction of machine processes, undermining as it did the handicraft trades, broke down the old craft ideals, wiped out the requirements for many skills and dealt a deadly blow to the long-existing apprenticeship relations. Apprenticeship as the world had continuously known it rested upon handicraft processes and these had been eliminated or transmuted by the "iron man".

Consequently there came more unskilled work, requiring little if any training, certainly nothing comparable to the seven or more years of apprenticeship of earlier days. A part of the confusion may also be traced to the general unrest and shifting pervading all workers, not merely the inexperienced. We are on the move, geographically, industrially, in fact in almost every angle of life. Modern genius pours out a constant stream of new machines, methods, processes and commodities calling for a continuous shifting of human efforts, which does not fit in any way the tried methods of apprenticeship. Apprenticeship with its years of careful, technical training, slowly evolving a skilled workman, assumed a high degree of industrial stability, an assumption upon which very few economic practices can rest today.

This general confusion or uncertainty as to the requirements of industrial training is reflected in the vagueness of the principles laid down in the Oregon legislation, regarding rates of pay and treatment of inexperienced workers.

> It shall be unlawful to employ minors in any occupation within the State of Oregon for unreasonably low wages.[1]
>
> Said Commission is hereby authorized and empowered to ascertain and declare, in the manner hereinafter provided. . . . (d) Standards of minimum wages for minors in any occupation within the State of Oregon and what wages are unreasonably low.[2]

Describing the wage conferences the law says,

> In its recommendations on a question of wages such conference shall, when it appears proper or necessary, recommend suitable minimum wages for learners and apprentices and the maximum length of time any woman worker may be kept at such wages as a learner or apprentice, which said wages shall

[1] *The Oregon Minimum Wage Law*, section 1.

[2] *Ibid.*, section 4.

be less than the regular women workers in the occupation under inquiry.[1]

Not the vaguest hint is given as to the principle to guide the Commission or conferences here except the statement that the wage of the adult learner or apprentice shall be less than the wage for the experienced adult, if the conference deems it proper or necessary to set such a wage rate. This is really no guiding principle at all as the idea here stated would of necessity be assumed. The only other expressions which might by any chance be regarded as a statement of principle are the two words " unreasonable " and " suitable ", the one used to describe the wage which it is unlawful to pay to a minor and the other to describe the minimum wage that shall be set for the adult learner. These vague terms certainly cannot be regarded as guiding principles for the Commissions.

Analysis of the problem through comparisons with various agencies working on apprenticeship elsewhere is almost futile. There is great confusion from state to state, shown in the divergence of the decisions on wages, lengths of learning periods, and other factors. Seldom have many states dealt with the same industries; one considers canning in particular, another some one phase of manufacturing, another the mercantile occupations and so on. Where extensive experience of a constructive nature is found it is primarily for certain " skilled trades " as in Wisconsin, and offers little help in dealing with the rank and file of unskilled workers. In certain population centers some of the trades unions such as the Typographical Union, Building Trades Unions, and others have worked out in connection with employers well-defined systems of apprenticeship, but here again there is little to guide the wage commissions who are struggling with the

[1] *The Oregon Minimum Wage Law*, section 8 (c).

problem because these trades unions are dealing clearly with a skilled type of work.

The importance of the problem and the decisions made should not be underestimated. Some have rested their estimate of the importance of apprenticeship as approached by the Commission upon the necessity for an adequate supply of skilled workers. We may concede a little to this view and recognize that the decisions made may also have value in helping to give boys and girls some aid in vocational guidance. But the real importance seems to the writer to rest elsewhere, since the trades most largely dealt with by the minimum wage laws, so far as really affecting the minimum wage and other elements of the conditions of work is concerned, are not the skilled trades but those requiring relatively little training, in many cases none. The importance rests in the high percentage of workers in these unskilled lines who are just entering the occupations. "Inexperienced" workers often constitute fifteen per cent and frequently as much as twenty or twenty-five per cent of the total working force. This in itself gives importance to the decisions made regarding them. But even more important in the long run is the fact that the inexperienced group unless carefully controlled may constitute a very dangerous competitive element dragging down the conditions of work for the experienced employees. Employers may use the learner to promote competition within the labor group itself and thereby weaken the latter's bargaining strength against management. Internal competition immeasurably weakens the group. This dangerous internal competition by learners or "apprentices" it is important for a wage commission to regulate.

Turn now to a few of the fundamental problems involved and the methods chosen by the Oregon Industrial Welfare Commission to deal with them.

What do we mean in a minimum wage law by a learner or

"apprentice"? Definition is difficult. Four words are used: learner, apprentice, inexperienced and minor. The meaning of "minor" so far as age is concerned is clear enough, but if the degree of experience is in mind it is subject to the same criticism as the other words. If the terms were used only in connection with certain highly skilled trades which require much careful training and definite study to master, such that the beginner is clearly receiving a genuine education, the definition would be relatively easy and one would know when the worker passed from apprentice to experienced worker. But the significance of this is lost in modern occupations. Industry is no longer the real source of education. Probably the most accurate of the above four terms is "inexperienced," implying nothing relative to training being received on the job but merely that the worker is below standard. As a matter of fact the provision of the legislation that the commissions may establish rates for minors and other inexperienced employees below the regular minimum wage necessary to provide a decent living was a concession to the employer because of the youth and inexperience of some employees. It was a recognition of the undoubted fact that some beginners might be unable to earn the minimum. The rather low wage and long learning periods decreed by the Oregon Commission and others would indicate, however, that they might have had in mind that the beginners in industry would actually have a great deal to learn before they would be experienced enough to earn the minimum and that they would be "learners" in the real sense of the term.

This problem of the learner raises the question as to whether the apprenticeship as regulated by the Industrial Welfare Commission should include provision for direct instruction and vocational education. It would hardly seem to be within the province of the wage board, charged with the duty

of setting wages, hours and conditions of work, to be swamped with the duty of seeing that industrial education is given to all the beginners in industry. Perhaps this is rightly one of the tasks of the state through the school system, but to place the responsibility upon the wage boards would swamp them under a mass of detailed work for which they are not particularly qualified. In Oregon the Commission has not attempted to prescribe the type of training if any which shall be given to learners. In all rulings except the first the scale of pay for minors and inexperienced adults has been graduated at frequent intervals up to the level of the regular minimum wage which must be paid to adults. This provision, it would seem, would give at least a little incentive to the employers to provide enough training so that the beginner would be able to earn the amount which must be paid at the time of the periodic increases. The following ruling quoted from Order No. 36 states the arrangement which may be made where real training such as might be given by schools or genuine apprenticeship methods is offered by the industry:

> In occupations where a charge is made for teaching, the minimum wage for apprentices shall be paid over and above such charge, and a deduction of the teaching fee from the minimum wage required for the learner shall be a violation of the wage order governing such occupation; provided, however, that the Industrial Welfare Commission will grant a permit upon application to employers in towns where no vocational training school is conducted, whereby the employer may deduct from the minimum wage for apprentices a charge for instruction in the shop for a specified time, which charge must be satisfactory to the apprentice, and must be approved by the commission.[1]

This ruling makes an effort to deal fairly with the employer

[1] Industrial Welfare Commission of Oregon, Order No. 36, section 4.

who is providing a real education and yet at the same time to protect the interests of the learner.

What shall be regarded as an apprenticeship period? Just a certain period of time, or time plus experience, or time plus experience plus instruction? The preceding discussion practically rules out instruction, at least for the mass of modern unskilled occupations, but the question as to whether it shall be just time or time plus experience still remains. Shall a minor or adult be regarded as having passed into the experienced group of workers because of having served the specified period, say one year, in industry in general or must the time period have been spent in the particular industry in question? Even this does not fully answer the query for we must still ask, does the period have to be spent simply in the particular industry or in the specific occupation within the industry? There are some occupations in widely different industries which are more alike than some of the occupations within a single industry. Still another issue is whether the period must be spent with a particular employer or if time spent with one establishment counts as part of the period if one transfers to another. The Oregon decisions have leaned toward requiring that the period must be spent in a particular occupation, not industry, in order to make the worker experienced. One exception to this is found in section five of Order No. 36 which specifies that a woman who has completed an apprenticeship period with one employer cannot be paid less than the minimum for the next period except upon permit issued by the Industrial Welfare Commission. This has the appearance of making the time spent with a specific employer the test. The real purpose of this provision, however, is to guard against an employer's simply moving a woman about from job to job and keeping her constantly on the inexperienced level of pay.

What should be the length of the learning periods to be

required of adult beginners in industry? If exact and detailed study of this issue could always be made there would be great diversity in length from industry to industry. In some cases of purely unskilled work the employee is as efficient as ever almost from the first hour of employment. In others there is a clear gain from experience. The Oregon rulings began with uniformity in the periods, one year being the established length, but this has been changed in the mercantile field to eight months. One year remains for all other occupations except that in the case of canneries one week is regarded as the period of training for certain different groups of fruits and vegetables, after which the minimum for experienced workers must be paid to at least fifty per cent of the employees.

By far the most important question is the one regarding wages and involves the point as to whether or not inexperienced minors and adults shall be treated alike. Table XVIII summarizes the rulings in Oregon both for adults and for minors. In both cases it will be noted that the pay is graduated upwards at various intervals of the learning period or the minority. For all occupations except telephone operation the rate of pay is the same for the respective periods, though the length of periods varies for the mercantile establishments. Telephone pay differs only in being divided into four intervals of increase instead of three, the beginning and ending rates being the same. The pay of minors begins slightly below that of inexperienced adults and then is graded through four periods from age sixteen to age eighteen at six-month intervals. The wage for the inexperienced adult is simply a concession to the employer on account of the lack of training of the beginner. The rate should be set as high as possible so as to come as near the level of the amount needed for a decent living as can be, in fairness to all concerned. For minors the law says the wage must not be unreasonably low.

TABLE XVIII. SUMMARY OF INDUSTRIAL WELFARE COMMISSION'S ORDERS ESTABLISHING MINIMUM WAGE RATES FOR MINORS AND INEXPERIENCED ADULT WOMEN

To Whom Applicable	Location	Dates	Rates	Order Numbers
Minors in all Occupations Ages 16 to 18	Entire State	Oct. 4, 1913	$6.00	1
		Sept. 1, 1916	$6.00	21
Minors in all Occupations		June 12, 1918	$5.00 $6.00 $7.20 $7.70 $8.40 $8.90	35
		Oct. 14, 1919	$6.00 $7.20 $8.50 $9.50 $10.50 $11.50 per period	46
Inexperienced Adults. All Occupations. Period of apprenticeship to be one year	Entire State	Feb. 7, 1914	$6.00	5
Inexperienced Adults. All Occupations except telephone (one year apprenticeship divided into three equal periods, except that the 1918 and 1919 rulings established for mercantile occupations an eight-month period divided 1–3–4)	Entire State	Sept. 1, 1916	$6.00 $7.00 $8.00 per period	7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20
		June 12, 1918	$7.20 $8.40 $9.60 per period	25, 26, 27, 28, 29, 30, 31, 32, 33, 34
		Oct. 14, 1919	$9.00 $10.50 $12.00 per period	38, 39, 40, 41, 42, 43, 44, 45
Inexperienced Adults in Telephone Service. (period of apprenticeship one year divided into 4 equal periods.)	Entire State	Sept. 1, 1916	$6.00 $6.60 $7.20 $7.80 per period	15, 16
		June 12, 1918	$7.20 $7.92 $8.64 $9.36 per period	30, 31
		Oct. 14, 1919	$9.00 $10.00 $11.00 $12.00 per period	42, 43

Evidently it is the intent to prevent exploitation of child labor, and yet one would not wish to see the wage set so high as to be particularly attractive. We had some experience during the war with the way in which attractive wages for minors drew them away from school and other fields of definite training. Too high a prescribed wage might be unduly attractive. A minor girl who has passed through the periods of training from sixteen to eighteen years of age becomes entitled at the age of eighteen to the legal minimum for adult experienced women. Likewise does the adult who has passed through the prescribed periods of training. Should their beginning wages be the same, or nearly the same, as in Oregon? There are dangers in either policy. If the wage rates are made practically the same the minor is handicapped in getting the job because in many cases an inexperienced minor is less desirable to the employer, since there is generally some gain in efficiency simply on account of maturity. The adult is a little more likely at least to be steady and reliable. If this wage is set also at rather a low point to make it worth while to hire the minor, then it is lower than one is justified in asking an adult to accept. On the other hand if the wages are not made nearly identical other difficulties ensue. A premium is set upon the employment of children. They are in danger of being exploited. At the same time the adult beginners are discriminated against and may find it difficult to get a job even at beginner's wages. It would seem to the writer that there is no complete solution to the problems involved and that the Commission must simply steer a middle course, watching every moment for evidences of exploitation and evasions, trying by trial-and-error methods to work out a relationship which, to use the language of perplexed lawmakers, will be " suitable " and " reasonable ".

One other problem of the relation of minor to adult arises at the time of transition from minor to adult. As a specific

illustration, in what status would a woman be who began her industrial life, say, nine months before she was eighteen years of age? Would she be obliged to begin her period of learning over again? Or would she receive full credit for the nine months of work while she was a minor? The Oregon rulings provide for this relationship and transition in the following statement:

> For the purpose of determining a rising scale for minor apprentices, the working time of female minors between the ages of sixteen and eighteen years shall be divided into periods of three months each. Each period, or major fraction thereof, shall be considered the equivalent of one month in the corresponding period of the apprenticeship of the adult workers.[1]

Under this provision the illustration given above would work out so that nine months' work while the employee was a minor would count for three months on her regular apprenticeship period of one year. This would leave nine months' apprenticeship yet to serve in all those lines requiring one year before becoming experienced.

No extended discussion is needed of the fact that there should be an infinite variety of orders to fit the wide differences in occupations if entire justice to everyone concerned is to be meted out. A learner in a relatively simple job might be very useful to the employer even on the first day of work whereas a beginner in a technical process might at first be worth less than nothing. Within moderate limits imposed by the multiplicity of the duties of the Commission and the complexities of the findings necessary, a reasonable amount of variation from industry to industry should be provided. With the slight exception noted above, the Oregon rulings are practically uniform for all industries under the direction of the Welfare Commission.

[1] Industrial Welfare Commission of Oregon, Order No. 46, section 12.

Unless rather careful watch is kept many practices will be developed by the unscrupulous employer to circumvent the intent of the law and the rulings.

An employer may employ too many minors. Where the work is such that long training and acquired skill are important factors in productivity this will not occur. But where the task is simple, necessitating little if any training, the temptation to employ many minors at low wages will be great. This is controlled in all lines where there are piece rates by the requirement that at least seventy-five per cent of all the workers in an establishment must be paid at least the legal minimum wage rate for the experienced adult worker. A very considerable part of the profit motive for the practice is removed by the device of graduating the scale of pay through the period of minority. The requirements in Oregon specify that the minor beginning at a wage of $8.50 per week shall be advanced one dollar a week at the end of each six months of service. School laws, more rigid requirements as to hours of work, and control through the issue of permits to minors may forestall the efforts of employers to exploit the minor workers.

Very similar to the foregoing is the practice of keeping on the employment roll too many inexperienced adult workers. This may be avoided by placing the inexperienced wage rate not too far below the regular legal minimum. Then, too, relatively brief apprenticeship periods with a graduated scale of pay throughout the periods will do much to remove the incentive to fill the ranks with inexperienced workers from whom a maximum amount of product can be secured for a minimum amount of wage cost. The Oregon Commission has kept the wage rates fairly proportioned but has left the apprenticeship period longer than is justified in many industries.

Still another of the evil practices which has put in its ap-

pearance from time to time is that of discharging the worker as soon as the apprenticeship period has been completed and the legal wage has to be paid. The moment this practice appears it should be the sign that the learning period set is altogether too long. The women are evidently worth much more than they are being paid. The policy of graduating the scale of pay from time to time has also done much to curb this type of evasion. As pointed out in the preceding discussion the ruling, for all cases where piece wages are paid, which requires that the legal wage rate for experienced workers must be paid to at least seventy-five per cent of the employees effectually curbs this evil also.

One other evil practice which developed in the early days of the minimum wage regulation needs to have a word of comment. A woman would be transferred from a line in which she had served her apprenticeship period to some other type of work in the same establishment and be made to begin the learning period over again. She was a bundle wrapper, let us say, then would be transferred to cash girl, then to a sales position and so on. Under this arrangement the unfortunate woman might go the rounds for a long time without reaching the level of the legal minimum wage rate. The provisions already mentioned which limit the total per cent of the working force who can be classed as inexperienced avail much in this evil of transfers. A ruling, already quoted in another connection, specifies that when a woman has completed any prescribed period of service as an apprentice she shall not be paid less than the legal minimum while working for the same employer except upon permit issued by the Industrial Welfare Commission. This ruling gives those enforcing the law direct supervision of the individual cases.

One is obliged to close this chapter as it opened. The problem of the inexperienced worker, both minor and adult, constitutes a "sore spot" in industry. While much attention

has been given to it real solutions have not emerged. The state of flux existing in modern industry is at the bottom of the difficulties, and for practical purposes the Commission charged with the enforcement of the law must be given wide, discretionary powers in order to give the legislation the flexibility necessary to make it fit the complexities of modern occupational conditions.

CHAPTER XIII

Effect on the Efficiency of the Employee and Her Retention in her Occupation

Much speculation and argument have been devoted to the theme of efficiency. Does the application of a minimum wage law which gives rise to an actual increase in the wage paid to those at the lower levels result in any added efficiency in them as laborers? Rather generally the economist and the administrator of the laws have believed in the affirmative. Frequently the employers before they have had any first-hand experience have decided in the negative, but large numbers of them have changed their views under actual trial.

The question is an extremely important one to consider. The answer will throw considerable light upon the degree to which the legislation is accomplishing its purpose. The declared intent of the act is to protect the health, morals and welfare of the women employees. If health and general welfare are improved, this will express itself at least partly in improved efficiency of the laborer. The answer to the question will likewise reveal how costly to society the law really is. If greater efficiency is secured from the workers then it is not only conceivable that the act does not impose any burden of cost upon society but that it may even be a financial benefit. Still a third reason for the importance of knowing the facts about efficiency lies in the bearing which it may have upon the viewpoint of the public and the employers and their cooperation in the fullest application of the law consistent with the highest degree of productivity.

How great a change in labor efficiency may be produced by the raising of the lowest levels of pay is hard to measure. Thus far there has been so little systematic study and even such a dearth of facts that conclusions are merely tentative. Furthermore, the wage is just one out of so many factors involved in the competency of a worker that it is hard to say how much of any measured change is due to a higher minimum wage and how much is due to a multiplicity of other influences. It will require the most extended experimentation and complex comparisons in order to trace out in any significant manner the threads of influence of the wage change. A further complication is introduced when we try to compare productive efficiency over any considerable period of time by the fact that the very nature of the tasks which may go under the same name in the production of a commodity changes. The introduction of a new machine, the slight alteration of the specific division of labor in the process, these and many other changes may make almost impossible the comparison of a worker's efficiency at one time with his own efficiency a year, or even a few months, later.

The testimony of employers doubtful of the efficacy of a minimum wage law is interesting as revealing not only their judgment of women employees but also their own psychology. We may concede the honesty of their convictions and yet cannot help but see that in many cases the convictions rest upon old habits, traditions and prejudices. To some of their arguments there is little or no weight, but others call for respectful consideration. A fairly frequent employer statement is that efficiency will actually be reduced because the women know that they will get the minimum and they simply will not work as hard. If the minimum is coming anyway, why exert themselves? Just as little work as possible will be done. This hardly needs comment and commands no respect whatsoever as an argument because the assumption that the

girl is sure of the minimum is false. If she remains in employment she is sure of the minimum but there is no compulsion resting upon any employer to retain her on the job. Closely associated with this contention is the further argument that low rates paid compel a laborer to work. If the woman does not work hard she gets little pay. Hence, efficiency is secured and large amounts of work are turned out by the compelling power of a low wage. This line of argument harks back to the days of long ago when it was believed that a profitable laborer existed in the person of the slave compelled to work. Economic theory and business practice have long since left this viewpoint behind. Effective work is not the sequel to compulsion. Again, it is sometimes contended that the girls do not want to earn more; they are satisfied. There may occasionally be truth in this. There are cases of southern Negroes and others who have so little ambition that if a higher wage is paid than that which suffices for the bare subsistence to which they have been accustomed, they simply lay off a certain number of days per week so that the total net wage resulting is about what they have been used to. Such is not the normal situation, however, and with our generally rising standards of living probably holds true in fewer and fewer cases. Rather, there is decided truth in the statement that where one human want is satisfied two wants spring up to take its place. This truth virtually denies that the normal woman employee does not want to earn any more than a small amount to which she has been accustomed. A more formidable argument and one which at first glance almost seems self-evident is that under modern machine methods the pace is set by the machine rather than the human being, and that increased efficiency is impossible to secure simply by paying the worker a higher wage. This argument might admit that increased efficiency would be probable where the labor was chiefly handwork but deny it where machinery plays a large role. To this

very plausible argument one of the most intelligent of employers gave careful study, and his experience shows that even where machine work has been largely introduced greater productivity may be secured through increased efficiency of the worker. I refer here to the testimony of Mr. Seebohm Rowntree in an article, "The Effect of the Minimum Wage upon British Industry." The output of goods, he says, varies considerably with the vigor, alertness and intelligence of the machine tender. Describing an experiment in which a change in wages had increased production thirty per cent where machines were used almost exclusively and where this was followed by a shortening of hours without any reduction in production, he says,

> The men were sharper at starting work when the bell rang and more alert in utilizing every moment of the day in seeing to it that machines were never running half empty, and that necessary adjustments were promptly made. Similar illustrations could be multiplied indefinitely.[1]

The general point of view that greater efficiency cannot be secured through the Minimum Wage Law is summed up in a statement made by an Oregon business man. "You cannot legislate efficiency into a clerk." [2] In one sense of the term certainly not, but on the other hand it is decidedly true that at least some conditions can be legislated into existence which will be conducive to increased efficiency and some which have been well described as constituting a "choice combination of conditions for reducing efficiency" can be legislated out of existence.

[1] Rowntree, "The Effect of the Minimum Wage upon British Industry," quoted from the *Financial Review of Reviews*, London, July, 1914, by the brief for the Oregon law in 1916, p. 490.

[2] The statements from Oregon business men used in this chapter were secured partly from published statements, partly from letters and partly from private interviews.

Let us turn now to a few of the positive reasons in support of the conviction that a reasonable application of the minimum wage principle will result in a distinct gain in efficiency. The problem here is quite similar to that involved in the shortening of the hours of labor. Mathematically it seems indisputable that if we shorten hours less work will be done. Mathematically also it seems indisputable that if we raise the rate of pay the labor cost in production is advanced. Such are the facts if only arithmetic be used. But men and women are "creatures of flesh and blood," animated by compelling psychological forces, and more than arithmetic must be used if the realities of the case are to be disclosed.

First of all we must recognize the radical change in the basis of competition. A new competition emerges, directly stimulating to efficiency in the employee. Contrary to the belief of an Oregon employer, quoted above, that the woman is now sure of the minimum and consequently will not work as hard as before, she is not sure of the job. No employer is under any compulsion to hire her. An important new fact, however, has developed in the relation of the woman to the job; namely, that she can no longer retain the job simply by being willing to accept a low wage. Competition for the jobs cannot be based simply on willingness to accept starvation pay, but now rests on service and efficiency. In some ways this reminds one of the changes from the old cutthroat competition between railroads which took the form of low rates and rebates, often even below the cost of the service, and which resulted often in wretched accommodations and deterioration of the roads, to the newer competition which expresses itself in more luxurious trains, better schedules and general improvement in efficiency of service. The employee must now commend herself through work well done, since she can no longer commend herself simply by a low price. It is important also in this instance that the employer now has a

distinct motive to help the woman become able to earn the minimum. He has to pay a certain sum; he is stimulated so to use his managerial ability as to enable the employee to earn the amount.

A second reason for believing that improved efficiency follows the lifting of the pay of those formerly receiving less than the needed minimum is found in the opportunity which arises for improved living conditions. Higher standards are made possible, though not necessarily insured, since some employees will no doubt squander the increased wages. Not every one is thrifty or intelligent in methods of expenditure, but a very substantial number have their conditions of life greatly improved. The higher wage creates the physical conditions conducive to greater efficiency. Better nourishment is possible, even probable, since the past deficits have largely come out of food. A girl, paid less than the minimum needed for decent living, paid three, four, five and six dollars per week as in the days before the Minimum Wage Law came in, found it necessary to do a great deal of work for herself at home; laundry work, cooking and other tasks have been necessary after a long day's work. Some relief from this is now possible, and the gain in efficiency for the day's tasks is evident. While the human being is by no means a machine, or even just an animal, nevertheless the comparison carries weight when one points out that it is a simple matter of efficiency to have a work animal well fed and cared for and that a good manager will always keep the machines in his plant in the best possible physical condition. The argument here from the point of view of a better wage is almost identical with the argument for shorter hours. Improved health and vigor result in an increase in productivity.

The most important reason, however, for a conviction that the minimum wage set at the amount needed for a decent living will increase efficiency is found in the changes wrought in

the psychological condition of the worker. Many employees in the past have seen not one ray of hope ahead of them. Good work should have brought better pay but did not, and they knew no way to bargain so as to obtain it. Listlessness and despair overcame many. Low pay meant not only an ill-nourished body but an ill-nourished mind and an "ill-nourished way of looking at life," including one's job. Knowledge that under the law one can secure fair returns for one's work means less mental inertia. J. A. Hobson in his book, *The Industrial System,* has well explained this psychological improvement in a statement about "motives".

> Man is not a mere automaton who will work if food is put into him: he is a human being operated by "motives". The payment he receives for his work must, therefore, suffice not only to replenish his physical output and to restore his bodily waste, it must stimulate his will. Under some conditions this "motive" does not involve any more payment than suffices for physical subsistence; a great deal of routine work of peasants and other labourers has always gone on upon a basis in which conscious motive involves no higher pay than a physical subsistence; or else, as in slave and serf labour, fear of punishment or some other sort of negative payment has furnished the conscious "stimulus". But when we come to civilised industrial communities, where the workers have some alternative to wage labour, most of them will be apt to demand a rate of pay which may be termed the moral subsistence wage, that will be somewhat above the physical subsistence level.[1]

Adam Smith in his *Wealth of Nations* has the same point in mind when he says,

> The wages of labor are the encouragement of industry which, like every other human quality, improves in proportion to the encouragement it receives. A plentiful subsistence increases

[1] Hobson, *The Industrial System: An Inquiry into Earned and Unearned Income*, 1910, pp. 62, 63.

the bodily strength of the laborer, and the comfortable hope of bettering his condition, and of ending his days perhaps in ease and plenty, animates him to exert that strength to the utmost. Where wages are high, accordingly, we shall always find the workman more active, diligent, and expeditious, than where they are low.[1]

Mr. Seebohm Rowntree, quoted before, says, " Nor must the mental effect of low wages on the worker be overlooked. A man who feels he is underpaid does not work with a will." [2] While in one sense, as stated before, " you cannot legislate efficiency into a clerk " you can legislate such physical and psychological conditions into existence as will be conducive to greater efficiency.

Two other minor considerations should be mentioned. There is probably a distinct gain in effective work through a lessening in the rapidity of labor turnover. Labor turnover is costly; costly in delays, inconvenience and mistakes. While there are no authoritative studies that will prove that the Minimum Wage Law has reduced the rate of turnover, it has been reduced. The rate of wages advanced but the rate of earnings advanced still more, indicating a greater regularity of work and less lost time. This will be seen in table XIX, page 193. This improvement may possibly be due to other factors, but it is probable that the minimum wage rulings themselves contributed to the change. The other minor consideration is the improved adjustment which comes in fitting the worker to the job. A girl may not be able to earn the minimum in one type of task and yet be able to equal the service of any one else in some other line. When wages down to a very low level can be paid there is no strong tend-

[1] Smith, *The Wealth of Nations*, Everyman's edition, p. 73.

[2] Rowntree, " The Effect of Minimum Wage Legislation upon British Industry," quoted from the *Financial Review of Reviews*, London, 1914, by the brief for the Oregon Law, 1916, p. 489.

TABLE XIX. COMPARISON OF AVERAGE RATE OF PAY AND AVERAGE WEEKLY EARNINGS OF WOMEN AND GIRLS BEFORE AND AFTER MINIMUM WAGE DETERMINATIONS, WITH PER CENT OF INCREASE OR DECREASE AFTER DETERMINATIONS, IN 33 PORTLAND AND 7 SALEM RETAIL STORES [1]

	Total Number	Average rate of pay per week [2]	Number of women	Total average weekly earnings
Portland				
Department, dry-goods and 5 and 10 cent stores:				
Before determinations	1,632	$9.69	1,632	$7.89
After determinations	1,365 [3]	$10.15	1,345	$8.67
Per cent increase or decrease	..	+4.7	..	+10.00
Specialty stores:				
Before determinations	167	$12.68	167	$10.20
After determinations	181	$12.11	181	$9.96
Per cent increase or decrease	..	—4.5	..	—2.4
Neighborhood stores:				
Before determinations	34	$9.54	34	$9.66
After determinations	20	$10.28	20	$10.31
Per cent increase or decrease	..	+7.8	..	+6.7
Total:				
Before determinations	1,833	$9.96	1,833	$8.13
After determinations	1,566 [3]	$10.38	1,546	$8.86
Per cent increase or decrease	..	+4.2	..	+8.9
Salem				
Dry-goods, specialty, 5 and 10 cent stores:				
Before determinations	97	$9.23	97	$7.66
After determinations	96	$9.47	96	$8.17
Per cent increase or decrease	..	+2.6	..	+6.8
Grand total:				
Before determinations	1,930	$9.92	1,930	$8.11
After determinations	1,662 [3]	$10.33	1,642	$8.81
Per cent increase or decrease	..	+4.1	..	+8.6

[1] Based upon data given by United States Bureau of Labor Statistics in *Bulletin No. 176*, pp. 18 and 24.

[2] Per cent increase or decrease is computed from the data given in dollars by the Bureau of Labor Statistics.

[3] Including 20 women whose regular employment began with the opening of a new department on the last day of the period covered in the investigation.

ency for workers to get shifted around to the jobs for which they are best fitted. Even the group which is distinctly subnormal or feebleminded continues at work at a wage below the level of subsistence. When a definite minimum must be paid, this group is necessarily segregated from the regular workers. While they constitute a problem, as will be shown later, it is encouraging to know that studies of the workers and the jobs are being made and that readjustments, clearly in the interests of efficiency, are being forced.

The study made by the United States Bureau of Labor Statistics in mercantile lines at the time the minimum wage rulings were introduced in Oregon shows the probable trend of figures on efficiency.[1] The data then collected gave the average daily sales of the clerk before and after the determinations. The study was confined to three department stores since only three establishments were large enough to have comparable groups before and after the beginning of the rulings. The average sales for all women employees declined by 6.2 per cent after the establishment of the minimum wage. It will be remembered from the data previously given that this study was made in 1913 and 1914, during which interval there occurred a distinct business recession, which might very well account for the entire decline in average sales. The interesting fact bearing on the effect of a higher minimum wage upon efficiency is that while the average sales of those already receiving above the minimum and so not affected by it declined 13.3 per cent the average sales of those who were affected by the minimum declined by only .9 of 1 per cent. Relatively the efficiency of the woman affected by the minimum seems to have risen. Whether this was the result of an actual increase in efficiency on the part of the individual women employed or the result of a more careful selection of employees

[1] "Effects of Minimum Wage Determination in Oregon," United States Bureau of Labor Statistics, *Bulletin No. 176*, p. 30.

from a more intelligent group the figures cannot reveal. In either case the result is an improvement in the working capacity of the employees. While these facts show a possible trend they are admittedly very inadequate and inconclusive. Average sales may be the best test available of efficiency of saleswomen but are by no means a complete or always a fair test. Other duties which she performs, such as care of the stock, have a value to the employer but are scarcely measureable. Furthermore, conditions over which the woman may have no control whatsoever may vitally affect the volume of daily sales. To this partial and inconclusive evidence from Oregon data may be added the following statement from an Oregon employer illustrative of a view frequently expressed: "The minimum wage has attracted a higher grade of help to the stores, and while the wages are more, the efficiency is also more." [1]

In the light of minimum wage experience and general theory one can not doubt the essential truth involved in the phrase, "the potential economy of high wages". It is more particularly true in the case of those affected by minimum wage rulings, since they are in the class where changes in physical and psychological conditions are likely to be most pronounced.

The preceding line of argument and evidence by no means gives assurance that increased efficiency will always result from increases in the wages set as a minimum. Some workers cannot be changed. They have always been inefficient and always will be. Some employers have always been poor managers and always will be. Furthermore, long experience with a discouragingly low wage, sapping the life and energy,

[1] From a letter from Thomas Roberts, Roberts Bros. (dry-goods, shoes and men's furnishings) Portland, Oregon, to the National Consumers' League, January 6, 1920, quoted in the *Brief for the District of Columbia Law*, 1922, p. 313.

may have ingrained into employees habits of mental and physical action that can be eradicated if at all only by long periods of time. One should not be surprised if the benefits to efficiency from higher wages would not be made manifest in some cases until many months had elapsed. Then, too, the above arguments do not argue constant advantages from indefinite increases. Increases in the rates paid to the groups at the margin may bring results greater than would come from increases farther up the line. Only experience can determine how far the increases will continue to bring more effective work. The efficiency point for wage increases can be discovered, as in the case of determining how much to shorten the hours of labor, by trying it out.

The other main problem to be discussed in this chapter is closely associated with the question of efficiency, namely, what effect does the Minimum Wage Law have upon the retention of the women employees in their occupations?

The claim was frequently made at the time the law was adopted that women would be displaced by men but both theory and fact disprove this claim. To the extent that increased efficiency is developed they will unquestionably be retained. Even in the trades which have traditionally belonged to men the women have been making a place for themselves. Many employers now testify to the high productivity of women in these formerly forbidden fields, in fact in some cases women have been found such effective employees that they have been retained even at the same wages as men. This is particularly true in the case of railroads. This, however, is exceptional practice and the majority of women still work at somewhat lower wages than men who are doing essentially the same work. Certainly women are unlikely to be displaced until the minimum wage level has been driven very much higher than most of the Commissions have so far had any tendency to push it. It is true that the study made

in Oregon by the United States Bureau of Labor Statistics showed that the number of women employed in mercantile concerns declined from 1913 to 1914 after the minimum wage determinations went into effect, but the number of men declined also though not to quite the extent that the number of women did. Furthermore, we must recall again that this interval was one of pronounced business recession in Oregon, as shown in chapter three, and this probably accounts for the decline in the number of women employed. Furthermore the fact that the number of men declined at the same time indicates that the men were not displacing the women. In department-store offices only did the number of men increase while the number of women decreased, and in this case the decrease among women occurred in the group under eighteen years of age who were subject only to the $6.00 per week ruling, and this $6.00 ruling could not possibly have been the reason for the discharge of the girl and the employment of a man in her place. The real reason was probably the six-o'clock closing regulation, which necessitated the employment of men for night work in some of the office occupations. The very rapid entry of women into industry in ever larger and larger numbers together with their open invasion of some of the very sanctuaries of men effectually denies the claim that the Minimum Wage Law leads men to displace women.

At first there appeared to be a tendency for experienced women who had to be paid the highest minimum to be displaced by girls or inexperienced women, and for women who had served the one year of apprenticeship to be released and others be taken on in their places. Two or three moves have been made which have largely ended this. In the first place wherever piece wages prevail, except in fruit and vegetable preparation, the per cent of inexperienced workers who can be employed at below the experienced minimum wage is definitely set at twenty-five. Then, also, the two developments de-

scribed in the chapter on apprenticeship, namely, the graduating of the scale of pay at intervals during the learning period and the shortening of the learning period, have made it unprofitable to keep discharging experienced help and taking on the inexperienced and minors. Added to these reasons is the fact, gradually being appreciated by large numbers of the more expert business managers, that the most economical labor to employ is that which is experienced and capable even though it is somewhat higher paid.

While experienced workers are thus unlikely to be displaced there is a large group of crippled, infirm, aged and slow workers who may actually not be able to earn the minimum and whom employers cannot retain at the legal minimum of pay without loss to themselves. This group might be able to earn something but not the minimum required. Under the operation of the law these could rightly be known as unemployables. It is a highly desirable outcome that they should be segregated from the regular group of employees. They are special cases and should be dealt with separately and not be included simply as a drag on the wage rate of the entire group. They constitute a group largely unable to bargain and under normal conditions without state interference are a dead weight hanging on to the wage rate of the mass of employees. When segregated they may be dealt with as they should be, namely, as individual cases. The Industrial Welfare Commission is specifically authorized to deal with them individually. The law says,

> For any occupation in which only a minimum time rate wage has been established, said Commission may issue to a woman, physically defective or crippled by age or otherwise, a special license authorizing her employment at such wage less than said minimum time rate wage as shall be fixed by said Commission and stated in said license.[1]

[1] *The Oregon Minimum Wage Law*, section 10.

The treatment of individual cases here authorized is highly beneficial both to normal workers and to the subnormal " unemployables ".

The conclusion thus seems to be warranted that improved conditions in the efficiency of the employees may confidently be anticipated, indeed actually have come to pass; that this removes any danger that the women will be displaced and find employment more difficult to obtain; and finally that such displacement as results to those who may be classed as unemployables is taken care of as it should be, through individual arrangements by the Industrial Welfare Commission.

CHAPTER XIV

Economic Effects of Minimum Wage Legislation Upon Employers

One of the most interesting features of the minimum wage experience has been the marked variations in the attitudes taken by different employers toward the legislation. From the first it has had loyal supporters in the ranks of business men, but its opponents have been vigorous also, and, as pointed out in the discussion of the constitutionality of the measure, have visioned economic disaster to business if the law be enforced.

Before turning to the economic effects of the operation of the law, it is well to examine briefly the property rights contention upon which the attack on the law first rested. It was alleged in the first Oregon cases that the enforcement of a minimum wage deprived the employer of his property without due process of law. The real character of this contention was well described by the brief for the District of Columbia before the United States Supreme Court in the words, "hypothetical claim of harm". Obviously no property was directly taken away; real deprivation of property, if any, comes through the effect of the law upon profits, an issue discussed later in this chapter. Suffice it to say here that the deprivation of property claimed was merely alleged, no accounts being presented at any time to support the contention, although when the Oregon case was before the United States Supreme Court three years of operation had elapsed, which was ample time in which to have been able to demonstrate through public accountants the losses if any were genuine. Even five years later when the District of Columbia case was before the United States Supreme Court the

deprivations were still merely alleged, no financial evidence being introduced to prove the case. In Oregon there is no evidence that there has been a single case of deprivation of property, unless the right to exploit a woman by paying her less than she is able to earn is to be regarded as a property right.

The real heart of the problem so far as the employer is concerned lies in the effect of the law upon competitive position. To this there are clearly two phases, local competition and interstate competition.

The best approach to the study of local competition as affected by the Minimum Wage Law is to analyze the competitive conditions before and after the initiation of minimum wage rates.

Before the inauguration of these rates the basis of competition tended to be the wages paid and the number of hours worked. For some reason the first move to lower prices or to increase profits comes in a " nibbling at " the wages of the laborers or in compelling them to work longer hours at the same wage. We have had ample evidence of this in the fact that in a period of depression the first move of which many business men seem to think is to reduce wages. Fortunately the last few years have seen a definite change in this, and we have witnessed a recession of prices without a correspondingly great decline in wages, in fact in some cases in the face of a rise in wages. In the case of the industries employing cheap labor the line of least resistance was to compete by cutting wages. This competition was easy since the employees were not in a position to object seriously, that is, effectively, and little thought was required to put wage reductions into practice. This practice placed competition upon an exceedingly low plane. The basis of competition tended to be set by the least scrupulous employers and constituted a marked evil, since its burden fell steadily upon the low-paid

employees, the ones least able to bear the weight of it. That some employers clearly compete through paying abnormally low wages to their labor force is seen in the wide variations in wage rates as pointed out in chapter five. That such discriminations resulting in exploitation of employees are present not only as between establishments but also within the same establishment is evident from the requirement sometimes imposed upon women and girls when they enter employment that they will keep the wage they are receiving a secret. This cutthroat competition on the basis of wages and hours affects not only all employers within the same industry but even those in other industries using approximately the same grade of labor. The plane of competition for all industries tends thus to be set by the least scrupulous managers.

After the inauguration of minimum wage legislation the plane of competition is radically altered. No longer can competitive strength or profits come simply out of the life of the worker in the form of low wages and long hours. From the business man's viewpoint it may sometimes be economy to pay low wages but it is seldom the mark of efficiency. Under the minimum wage decrees establishing the lowest rate of pay economy must be looked for elsewhere. As discussed later in this chapter management is compelled to originate greater efficiency to take the place of wage cutting. From an Oregon manufacturer comes a statement bearing out this point: "It (the Minimum Wage Law) has removed the opportunity of the wage cutter and inefficient manager, the opportunity of under-selling and taking undue advantage of his more just and righteous competitor." [1] The testimony given by various Oregon business

[1] Statement of E. L. Thompson, Treasurer, Portland Woolen Mills, made in a letter December 3, 1919, addressed to the National Consumers' League, quoted in the *Brief for the District of Columbia Minimum Wage Law* in 1922, p. 339.

men in conversation with the writer frequently brought out this same point.

The reasonable conclusion from experience would seem to be that the minimum wage legislation changes the plane of competition, placing it upon the basis of the efficiency of management where it ought to rest, rather than upon a low wage and long hours, the burden of which unfairly falls upon the employee.

An interesting angle of this competitive problem came to light during the course of one of the hearings held in Portland relative to raising the minimum wage rate in mercantile establishments. The manager of a newly established store contended that the eight-hour day, six-o'clock closing, and $9.25 minimum wage made it practically impossible to found a new business in Portland, especially in view of the difficult business conditions then generally prevailing. This was in 1913 when the first rulings were being debated. He declared that it was very unfair for the older, established stores to advocate now such a minimum wage, which would be ruinous to the newer concerns.[1] It is true that the older, established stores based upon efficient management do favor minimum wage regulation but this does not mean that it is unfair to newer businesses. It only makes it difficult for those who desire to found a business which cannot rest upon the higher plane of competition which the legislation enforces.

Another phase of local competition is that injected by the ruling of the Industrial Welfare Commission which sets six o'clock as the closing hour for employment of women. This ruling brought a storm of disapproval from some of the department store managers selling commodities also handled by stores employing men as clerks, which stores could continue

[1] *The Oregonian*, September 24, 1913.

to remain open nights and get the cream of the Saturday business. No damage would be done, it was admitted, if the ruling could be made to apply to all mercantile houses and not merely to those employing women. It was noticeable, however, that the most pronounced defense of the ruling came also from a department store manager employing women, who pointed out that the hours at which the public trade are largely matters of habit; that when eleven-thirty was the hour of closing the rush came at eleven o'clock; when they advanced the closing time to nine-thirty just as much business was done as before but the rush now came at nine o'clock. No real damage would be done if six o'clock were made the closing hour, he contended, since, as before, the hour for trading would simply be changed.[1] On the whole his position was probably correct, though it must be recognized that there is some measure of competition which would be felt from specialty houses which may remain open after the general closing hours since they do not employ women.

One other side of the intra-state competition, brought out in the original brief against the Minimum Wage Law, developed from the early rulings which set a higher minimum for women employed in Portland than for those employed in the state at large outside of Portland. This, it was contended, gave undue advantage to the employers located outside of Portland and discriminated against the Portland firms. This discrimination would be possible under the law if the Industrial Welfare Commission did not use good judgment. It must be remembered, though, that public hearings are held, to which every one interested must be admitted and from which no testimony is barred. Any such unfairness would there be exposed and except under unusual circumstances would have slight chance of becoming

[1] An account of the contending arguments is included in a report of the hearings, published in the *Oregonian*, September 24, 1913.

of any importance. The Oregon Commission in its rulings as pointed out in chapter nine has now adopted rates which do not vary with locality. In practice this competitive objection is eliminated, though it is still possible under the law.

Complexities growing out of interstate competition constitute a more vital problem than do those arising in local competition for, while the action of the law will eliminate the cutthroat competitor within the state, the business men subject to the legislation may still be faced with a cutthroat competitor across state lines. Thus far attempts at minimum wage legislation have been entirely local and there has been no certainty that the requirements in competing states will be at all uniform. During the hearings on proposed changes in rates in Oregon there have frequently been emphatic protests against decisions which it was claimed would handicap Oregon and either keep new capital from entering the state or drive present business concerns from the state. In some cases the protests have been excited by the keen competition actually felt; in other cases they were advanced because they constitute a plausible argument.

Occasionally, it must be conceded, there will be real competition which will be severe. The fruit industry, for example, is highly competitive in the coast states, and the policy of one state must be somewhat contingent upon the policies of the neighboring states. This was probably the cause for the change in rulings in Oregon which brought some of the decrees more into line with the determinations in California. It was claimed at one time that the removal of an Oregon cannery across the line into the state of Washington was a clear case of an industry driven out because of the rulings as to hours, but this was effectively refuted by the Industrial Welfare Commission, which pointed out that at the same time this move was made this same company purchased another plant in another Oregon city. The removal of the

first plant could thus hardly have been due to the Oregon determinations. Although no actual evidence can be advanced it is a common charge that every type of progressive legislation in the state retards the influx of capital. Such a charge, as already mentioned, has always been made about an income tax. One manufacturer, discussing the Minimum Wage Law, after mentioning the initiative and referendum, the ten-hour law, workmen's compensation, and other legislation, remarked that Oregon was "a fool state, always trying some new-fangled legislation," most of which was a discouragement to enterprising business men. Such undoubtedly represents the opinion of some employers.

The real facts regarding interstate competition are shown in tables XX and XXI which compare the wage rates, hours and apprenticeship periods for Oregon, Washington and California. From these figures it is evident that conditions are moderately comparable in the three coast states, at least that the Oregon business men have no cause for complaint. If anyone has the advantage they have. The last Oregon rates set were distinctly below those in California and the same as those in Washington, except for the somewhat higher rate in Washington public housekeeping. The number of hours per week permitted is the same in all three states, though Oregon tolerates nine hours per day in contrast with eight per day in her neighbors. In the learning periods allowed Oregon's requirements are not on the average as severe as those in either Washington or California. Oregon employers thus have no cause for complaint, but this does not change the fact that closer cooperation is needed between the states. It is entirely possible for the conditions of interstate competition to work a hardship upon some employers and for the consequences to be such as to turn the employer's sentiment away from the law and hence to undermine its foundations.

TABLE XX. APPRENTICESHIP SCHEDULES SET BY PACIFIC COAST INDUSTRIAL WELFARE COMMISSIONS

State	Mercantile		Manufacturing		Laundry		Office		Public Housekeeping		Personal Service		Telephone		Telegraph		Canning
	Full term in months	Periods in months	Full term in months	Periods in months	Full term in months	Periods in months	Full term in months	Periods in months	Full term in months	Periods in months	Full term in months	Periods in months	Full term in months	Periods in months	Full term in months	Periods in months	Full term
Oregon	8	1-3-4	12	4-4-4	12	4-4-4	12		12	4-4-4	12	4-4-4	12	3-3-3-3	12	4-4-4	
Washington	8	1-2-3-4	A-Garment making—9 B-Tailoring, etc.—9 C-Printing—9 D-Chocolate dipping—6 E-Box, candy, etc.—4 F-Sorting, paper mills—4 weeks G-Brush making—8 weeks Brush finishing—4 weeks	1-3-2-2-1 1-2-3-3 3-2-2-2 1-1-2-2 1-1-1-1 1-1-1-1 weeks 2-2-2-2 weeks 1-1-1-1 weeks	4	1-1-1-1	A-General office work—6 B-Doctors and dentists—4 C-Bill clerks, etc., and cashiers in motion picture houses—4	1-1-2-2 1-1-1-1 1-1-1-1					7	1 2-2-2	7	1-2-2-2	
California	12	6	6	3	6	3	6	3									4 weeks
British Columbia..	12	3			12	4	12	3					9	3-3-3	9	3-3-3	

TABLE XXI. COMPARISON OF WAGE RATES AND HOURS OF WORK FOR ADULT WOMEN AS ESTABLISHED BY THE LATEST RULINGS OF THE INDUSTRIAL WELFARE COMMISSIONS OF OREGON, WASHINGTON AND CALIFORNIA

State	Minimum wage for experienced adult	Beginning wage for inexperienced adult	Beginning wage for inexperienced minor	Hours per day	Hours per week
Oregon	$13.20	$9.00	$8.50	9	48
Washington....	13.20	9.00	9.00	9	48
California	16.00	12.00	12.00	9	48

Recognition of the inherent interstate difficulties brought the Industrial Welfare Commissions of Oregon, Washington, California and British Columbia together in a conference at Portland, Oregon, in September, 1919. While they recognized certain variations in rulings as necessary to meet peculiar local conditions it was their belief that there were common principles to be applied in all the jurisdictions. They were unanimous in the opinion that there should be a uniform minimum wage not only for all four areas but also for all industries. There was no agreement as to the length of apprenticeship periods necessary though there was a common opinion that the periods now existing are too long and that in some cases, such as laundry and hotel work, probably no learning period is justified.[1] Their experiences and discussions led to full recognition of the potentialities of interstate competition, expressed in the following resolution:

Whereas, The Industrial Welfare Commissions of the Pacific Coast, in conference assembled, have evidence that the high

[1] *Fourth Biennial Report of the Industrial Welfare Commission of Oregon*, 1921, p. 21.

industrial standards demanded by our citizenship for the protection of women and minors in industry creates for the Pacific Coast an unfair competitive position in certain manufacturing industries; and

Whereas, The Pacific Coast is unalterably opposed to lowering its industrial standards, believing such standards to be ultimately of great benefit to the commonwealths in better physical and moral conditions;

Be It Therefore Resolved, That we, the undersigned, Industrial Welfare Commissions of the Pacific Coast petition our representatives to urge federal regulation of hours of labor and minimum wages of women in industry.[1]

Some type of joint or cooperative action is clearly essential if the states which desire high standards are to avoid the evils of competition from states or regions willing to permit low standards. The suggestion of federal action is worthy of careful study and the present attitude of the United States Supreme Court should not be allowed to stand in the way of such study.

Finally, attention should be directed to the charge made by some employers, especially at an early date in minimum wage experience, that their business would be ruined by such wage requirements. This was an issue of profits and prosperity. When in opposition to the Minimum Wage Law the cry is made that profits will be turned into losses and prosperity give way to industrial ruin, one is reminded of clamors of more than a century ago when Peel's Health and Morals Act first proposed to limit the hours of apprenticed children. Prosperity then seemed to rest, if one was to have accepted the pleas of the manufacturers of the day, upon the long hours of work of little children. When the claim is made that a legal minimum wage is going to be ruinous to busi-

[1] *Fourth Biennial Report of the Industrial Welfare Commission of Oregon*, 1921, p. 21.

ness it seems to indicate that prosperity and success are founded upon the rate of pay given to the women working at the lowest levels of remuneration. For business at large such is certainly not a true picture.

Labor costs are a just charge upon industry, as much so as interest charges, rent and the profits of management. Sometimes the labor item is a heavy one, again it is relatively small, the tendency being under modern machine methods to make the wage factor less significant so far as the individual worker's pay is concerned. The advances necessitated by the minimum wage rulings are relatively insignificant in the total charge against industry, for they of course affect only those at the very bottom. The effect is not comparable with what would take place if the entire range of wage rates were lifted. To lift the wage of the lowest-paid workers and to lift the rates for the entire labor force are two very distinct acts which the arguments of certain employers seem frequently to confuse. The study made by the United States Department of Labor in 1914 in Oregon showed an increase after the minimum wage rulings became effective of three mills on the dollar in the expense of doing business in the mercantile establishments investigated.[1] This occurred too, it must be remembered, at a time when a distinct business depression was being felt, which alone was probably sufficient to have accounted for this increase.

While the increased labor cost is probably an insignificant item, there will possibly be some concerns which will be driven out of business, marginal producers who cannot stand even a slight advance in costs. The term marginal producer is here almost a misnomer, for they are rather sub-marginal producers who are managing to hang on by paying an unfairly low wage. This "cutthroat" group will probably be eliminated by the minimum wage rulings unless they are

[1] United States Bureau of Labor Statistics, *Bulletin No. 176*, p. 33.

induced to secure their net income by other means than low wages. These producers are similar to those in the well-known sweated trades and are of very questionable value to the community. If these industries are not fitted to survive while paying adequate wages it may be to the best interests of the state to have them eliminated.

Many employers, even not of the cutthroat variety, will find it necessary to raise the wages of some employees. Will this not cut into their profits and perhaps menace their prosperity? Experience in Oregon as elsewhere indicates that in place of a cut in profits there comes a "tuning up" of the industries to a new key. Management is compelled to be more efficient or else to suffer loss of profits or to quit. Mr. Seebohm Rowntree, previously quoted, speaks out of a rich experience upon this point:

> The average employer is no more doing his very best than the average piece worker is working at the top of his strength. Each can do a little more if circumstances compel him to do so. And the employer who suddenly finds himself faced by some new conditions which threaten him with loss, will, as a rule, be able to find ways by which at any rate part of it can be obviated.[1]

It must suffice here briefly to mention a few of the possible economies which may be instituted to overcome the additional costs which are imposed by the minimum wage rulings. Besides these economies here listed there are many more, known perhaps only to management itself, whereby employers may come a little nearer to doing their best. (1) A closer scrutiny of the organization will stop innumerable leaks causing serious loss. Wastes of many types will

[1] Rowntree, "The Effect of Minimum Wage Legislation Upon British Industry," *Financial Review of Reviews*, London, July, 1914, quoted in the *Brief for the Oregon Law*, 1916, p. 580.

thereby be eliminated. The large percentage of waste in industry laid at the door of management in the report "Waste in Industry" by the American Engineering Council should be borne in mind on this point. (2) Oregon business men bear testimony to a speeding-up of industry, to more careful training and adjustment of the worker to the job with resulting gains in her efficiency. "While the wages are more," says one employer, "the efficiency is more." (3) There is common testimony of a greater effort to eliminate lost time during the day. (4) By no means least among the efforts to improve general efficiency is the introduction of more and better machinery. There is thus reasonably good ground for the opinion that the minimum wage decrees have actually been a stimulus to employers to come nearer to doing their best in management.

The above conclusion has been denied on the ground that the urge for profits will already have led management to try every possible improvement making for efficiency that is feasible at the time. "Employers are always anxious to obtain the very highest profit, and if such economies were possible they would already have been effected." Here again Mr. Rowntree, knowing manufacturers, has analyzed the situation when he says,

> Employers like every one else are likely to get into ruts. They are used to a certain method of conducting their business, and to certain profits, and while these profits are secure and nothing shakes them out of their rut, they do not trouble themselves about every leakage, or live on the lookout for every possible advantage.[1]

Of all the obstacles or changes which might jar industry out

[1] Rowntree, "The Effect of Minimum Wage Legislation upon British Industry," *Financial Review of Reviews*, London, July, 1914, quoted in the *Brief for the Oregon Law*, 1916, p. 565.

of its "rut" that which gives a distinct gain to one of the other factors in production is most advantageous.

It seems reasonable to conclude from the preceding analysis that only one group of employers is permanently injured by the minimum wage, namely those of the cutthroat variety, whose general intelligence or ability is such that they are unable to find added economies, and even these employers are disastrously injured only when their enterprises are at the margin. The position of the able and high-minded employer is actually improved. As stated by Rev. E. V. O'Hara, first chairman of the Oregon Industrial Welfare Commission, "Even apart from the human appeal to which most employers readily respond, a policy of enlightened selfishness on their part would lead them to support this legislation." Legitimate profits are not hereby injured. Rather are they freed from the drag of cutthroat competition. Prosperity is not undermined but rather made to rest upon a more sound foundation.

CHAPTER XV

Employer Points of View

At the time of the adoption of the minimum wage legislation in Oregon there was of course an undercurrent of opposition from certain employers, although the main representatives of more enlightened business interests, especially if they reflected even slightly a community standpoint, accorded cordial support to the measure. There were some expressions of a purely selfish, " dollar " point of view, coming from men who thought they sensed some encroachments upon their profits. Like much of the more recent opposition most of this early opposition is a reflection of an extreme *laissez-faire* philosophy which does not desire any more government interference with business than is absolutely necessary. It took the form of such expressions as: " I intend to run my own business " or " No one is going to dictate my business affairs to me." This attitude of mind which resents interference in business affairs will be found expressed throughout the entire history of the legislation, although with diminishing force as the policies and practices of the Industrial Welfare Commission took tangible form and were clearly seen to be within the bounds of reason.

Even from the first there was open endorsement of the law on the part of elements in the state which may be regarded as representative of the best employer point of view. For example, the law was passed by the state legislature, in which the business interests are well represented, and, as stated in a previous chapter, the measure received cordial support there. From the first the newspapers of the state,

especially the leading ones, gave hearty editorial support to the law. One of the earliest evidences of favorable business sentiment was the endorsement given by the Board of Governors of the Portland Chamber of Commerce.[1] Relatively few business men came out personally into the open in favor of the law, probably largely because few had given to it any particular thought. So much for the earliest expressions of opinion.

During the years of experience with the legislation many important evidences of employer opinion have been brought to light and significantly many radical changes in position have occurred. The history of the conferences on which the employers have been represented and of the public hearings which have been held reveals the fact that the business men have frequently been on opposite sides on some of the important issues raised. Some wished six-o'clock closing, some bitterly opposed it. Some desired lifts in the rates of the minimum wage, some saw nothing but disaster in such advances. It is frequently interesting to see how the answers to employer opponents of the law or of the policies of the Industrial Welfare Commission have been advanced by employers themselves.[2]

In analyzing the employer attitude, consideration is first given to the opposition. The feeling of resentment at any interference with private business seems particularly difficult to root out. Seven years after the legislation went into operation the following statement was made by an employer, one who abides by the law but who is not quite able to accept its implications: " It would create a better spirit, a spirit that

[1] *Second Biennial Report of the Industrial Welfare Commission of Oregon*, 1917, p. iv.

[2] The material upon which the discussion of points of view is based is taken from published accounts of conferences and hearings and from personal interviews. The best published accounts are in the *Oregonian*.

would be beneficial to both employers and employees, if the law was not quite so rigid as it is, or if the Welfare Commission and persons holding positions of this kind did not take the attitude that they usually take. In this state, they are supreme dictators and they want you to know it." Any form of " dictatorship " arouses resentment. Frequently the opposition, especially to particular rulings, has been hidden under disguises. It is amusing sometimes to have the employer battle for a particular concession on the ground of the convenience of the buying public. Such was frequently the case when the limitation of hours and the six-o'clock closing were under consideration. It almost sounded as if a few of the employers had been especially commissioned by the consuming public to protect it against moves which might bring any inconvenience. This excuse is almost instinctive, so much so that one of the reports of the Commission states that in granting the emergency permits for overtime it is not always an easy matter to satisfy the employer as to the distinction between the " distress of the consumer or general public " and a " trade convenience ". Another excuse occasionally offered is the welfare of the employee. Much concern is sometimes manifested over their displacement. " Great injustice is done to a woman who must be discharged because she cannot earn the minimum," it is said. " She is at least entitled to earn something, whatever her ability will command." At certain times the employer is right in his defence of the best interests of the woman, but frequently he is merely hiding behind her. In a few cases women from an employer's factory have appeared along with the employer himself in support of certain positions. In these cases it is difficult to imagine that the woman is free in her expression of views. There is occasionally no doubt but that the employer has brought her there himself. At one hearing where reduction in hours was under consideration a woman was

present from a factory, the owner of which was also in the conference, to urge no reduction below ten hours per day as the women were satisfied and wished to work ten hours per day.

Upon at least one occasion striking opposition arose because of a misunderstanding. Rumor carried the news to employers that the Industrial Welfare Commission had passed new rulings when in reality only the proposal of increases had been made and the hearings had not yet been held. A meeting of protest was held at the Portland Chamber of Commerce which brought out some rather noisy demonstration against the minimum wage legislation, including considerable applause when a member of the state senate declared his intention of going into the next legislature for the repeal of the law. This noisy demonstration quieted a great deal when it became known that no new rulings had been promulgated and that full opportunity for everyone to be heard was certain to be offered.[1] The incident, together with opinions expressed in some private conversations, leads the writer to believe that a considerable amount of such opposition as develops is due to misunderstandings.

As previously indicated, the objections have chiefly centered on the hours rulings rather than on the wage determinations. During the war an emergency conference was called at the request of the Anti-Blue Law League.[2] Hotels, woolen mills, drug stores, cigar stores and canneries were the chief objectors to the hours regulations, some to the nine-hour day, some to the six-o'clock closing. The very existence of the law was threatened by some of them. The Industrial Welfare Commission very wisely adjusted every case where it was possible to do so equitably. In the protest

[1] *The Oregonian*, March 7, 1916.

[2] *Third Biennial Report of the Industrial Welfare Commission of Oregon*, 1919, p. 12.

of the canneries, opposition to restriction, even the restriction of the ten-hour law, crystalized to the point where an amendment to the Minimum Wage Law was passed which took the canneries from under the control of the Industrial Welfare Commission so far as hours are concerned and even exempted them from the ten-hour limit, provided time and one-half be paid for all hours worked over ten. This constituted a serious inroad upon the regulation of industry and it is unfortunate that sufficient support could be mustered to bring such political pressure to bear.

On the other hand the loyal support massed on the side of the Minimum Wage Law has been encouraging. There was some employer support from the very first, managers who were aware of the type of cutthroat competition that was going on and did not wish to be participants in the exploitation of women and minors. The very fact that so many men would not come out into the open with their objections but hid behind various excuses proclaims a deepseated recognition of the essential fairness of the legislation. Significant changes have come in the views of individual employers. Some who had earlier been opponents became supporters of the rulings. In a few instances the shift of position was very striking indeed, showing a decided change in convictions as experience brought knowledge, and the fairness of the Industrial Welfare Commission and the justice of their rulings became evident. Words of thanks for just decisions were received from those who had been in opposition even to the extent of threatening to repeal the law. The words of thanks from one employer who appeared to give them in person are worth quoting. "The work of this conference has been good and wholesome and clear-cut. It shows what can be done to reconcile the interests of employers and employees when all work together in a spirit of good faith. I want particularly to compliment Mrs. X and the members

of the conference who represent the employees for their fairness. I believe the work of this conference has justified the existence of the Industrial Welfare Commission for a long time to come."

The writer believes that the following personal testimony of an Oregon business man expresses what is now a very widely held point of view. "If this (the effect of the Minimum Wage Law on industries) could be thoroughly understood by the business interests of the state, and a law made and applied fairly, it would certainly be a big boon to investors and workers."

On some phases of the rulings there has been practically no hostility. "I'll tell you, Mrs. X," said an employer during one of the hearings, "when it comes to sanitary conditions I'm ready to go farther than you are. I don't think our present regulations are severe enough in that respect. We should provide not only proper sanitary conditions for women but we should regulate the cubic feet of air, the ventilation, the lighting and numerous other conditions affecting women workers." One cannot help but wonder how far the employer would actually go in voting for some of these regulations, but experience shows that on sanitation, ventilation and such conditions cooperation is very cordial.

Support for the wage rulings, as stated above, has been more general than support for the rulings on hours. At first thought this would not be expected. There is no doubt as to the fact, however. Perhaps it is because the rulings in behalf of the women receiving the lowest level of pay are so evidently fair and reasonable. Perhaps it is because these wage rulings affect only a relatively small portion of their working force and require no fundamental alterations of methods or organization such as are required by rulings as to hours or time of closing. Wage rulings can at most affect only a small group of the employees but hours rulings

may affect markedly the work of the entire factory, even including the men who are employed. Or it may be that the wage determinations are better received than those on hours because changing industrial conditions have raised the general level of pay for women to the point where the minimum which has been prescribed is below what would be paid in the vast majority of cases anyway. This is probably true, although as pointed out in chapter ten the legal minimum wage does have a pronounced effect, as is evident from the fact that there is some massing of the workers at this level. That this may, however, be the cause for the views of some of the more successful employers is indicated by the fact that those who proclaim the fairness of the wage rulings frequently comment upon the fact that in their establishments the wages paid are above the legal amounts required.

Finally, the regular support given the law is shown in the comparatively few violations which occur. While no doubt there are many violations which are never revealed, since the Commission has always been very short on inspection, the testimony of employers is that there is general obedience to the law. Such inspections as are possible show close cooperation on the part of the majority of employers. This is even true in the case of orchards, berry fields and hop yards where it is extremely difficult to maintain the right conditions. Such evasions as the extensive use of apprentices and their discharge as soon as the legal minimum must be paid are the exception far more than the rule.[1]

After the decision of the United States Supreme Court in the District of Columbia case it was occasionally said, "The Minimum Wage Law is now dead." It was freely predicted that no attention would any longer be paid to the rulings of the Commission. Such has not been the case, however. The Attorney-General of the State of Oregon gave

[1] General obedience to the rulings is testified to in the biennial reports.

it as his opinion that the rulings on hours and conditions, overtime, permits, and minors were not overthrown by the decision of the Court. This has given a strong nucleus for continuance of the Industrial Welfare Commission's activity and has helped to carry on the spirit and action of the law. The legislature has continued the appropriation for the Commission so that its activities have not lapsed, though of course no further wage determinations have been made. The Commission carries its decrees on the legal minimum wage in its current published rulings, though the State Labor Commissioner's office has dropped them from the list of enforceable labor laws of the State. Employers displayed no disposition to welcome the Supreme Court decision; in fact their openly declared sentiments were against the Court decree. Said a director of the State Laundrymen's Association to a representative of the press at the time of a meeting to discuss their attitude in the light of the Court decision, "While the Minimum Wage Law of Oregon may be unconstitutional, it has served the purpose of giving women workers much needed assistance in living conditions and is a good thing." From the formal action of the Oregon Laundryowners' Association came the following resolution, unanimously adopted:

Whereas: The minimum wage law has been declared unconstitutional by the U. S. Supreme Court, in the District of Washington,

Whereas: We believe in the right of our employees to receive fair wages based on a minimum wage and to consider their individual efficiency, and,

Whereas: We expect a fair remuneration on work done,

Now therefore,

Be It Resolved;

That we place ourselves on record as favoring a

> continuance of the observing of the minimum wage law as now in force in this State and that there continue to function a committee known as the Minimum Wage Commission, to see that this law be respected and enforced.[1]

Similar action was also taken by the Manufacturers' and Merchants' Association of Oregon. Their resolution is here quoted.

> Be it resolved, That the Manufacturers' and Merchants' Association of Oregon pledge to the Industrial Welfare Commission their support and cooperation in maintaining the present status of the Oregon law, and that we will use every effort to discourage anyone from testing the validity of the law in the courts, and will also use every effort to prevent the repeal of the law by the legislature, should such a thing be attempted, and as an evidence of our sincerity, we hereby pledge ourselves to be governed in the future as we have in the past by the rulings of the Industrial Welfare Commission.

These statements and resolutions of support came in 1923, soon after the adverse decision of the Court, but to the 1929 legislature the Industrial Welfare Commission reports that the spirit of these resolutions is just as active and sincere now as at the time of its adoption and that in addition they have the support of the Hotelmen's Association, the Oregon group of the Northwest Canners' Association and the Association of Office Building Owners.[2]

The majority of the employers of the State of Oregon have clearly swung into line in support of the spirit of the Minimum Wage Law and this in spite of the convenient

[1] Taken from the original copy in the possession of the Industrial Welfare Commission.

[2] *Eighth Biennial Report of the Industrial Welfare Commission of Oregon*, 1929, p. 4.

opportunity to revert to unregulated competition afforded by the adverse decision of the United States Supreme Court.

It is of value here to gather together the suggestions made at various points in this discussion which will help to explain the warm support given to the law even under the unpropitious circumstances of declared unconstitutionality. First may be mentioned the general advance in the economic position of women. This is so wide-spread and takes so many forms that it has helped to shift the entire range of public opinion, even that of employers. Second, there is the gradual adjustment of business to the conditions which the Industrial Welfare Commission has requested. As these adjustments have been made it has been recognized that the requirements did not bring disaster but rather a higher standard of competition, fairer to every one concerned. Third, it has been seen that the law is not a rigid piece of legislation, imposing iron-clad regulations upon a dynamic business world, but that it is infinitely flexible, capable of being adjusted to the rapidly changing needs of industry. Finally, and most important, the favorable employer attitude is largely the result of the good sense, prudence and diplomacy of the Industrial Welfare Commission. Fortunately the personnel in control of the administration of the law has always been of the highest type. It would have been perfectly possible for certain types of administrators to have created from the first an obstinate opposition. Instead, the common sense manifested and due consideration given to business problems have appealed to business men. Diplomatic handling of concrete situations has created genuine good-will. Even the flexibility previously commented upon is largely the product of this good sense and diplomacy in the administration of the law. As a result of this favorable attitude throughout the state the Commission has been able to continue to function. While it carries on no prosecutions,

it does continue its inspections and investigations, it continues to declare the minimum wage, maximum hours and standard conditions of work. In brief, it continues its operations as before, except that it now depends upon favorable public opinion for its sanctions rather than upon legal prosecutions.

Given a reasonably fair chance there is no doubt but that the minimum wage legislation can secure the hearty cooperation of the interested parties.

CHAPTER XVI

Some Conclusions

The material presented in this study has attempted to disclose the economic effects of minimum wage legislation so far as the experience of the State of Oregon serves to reveal them. It is not the purpose of this concluding chapter to repeat the practical conclusions already indicated, but rather to enumerate some suggestions which have forced themselves forward during the progress of the study. What of the future? Is the experiment with the Minimum Wage Law just one of those passing political moves which are made, tossed to one side and forgotten? Does the adverse decision of the United States Supreme Court forever cancel the legislation and leave conditions as if the law had never existed?

One is always in danger who turns to forecasting and yet a study of a social experiment such as this in Oregon has little purpose unless it leads one to a consideration of the developments yet ahead. Let us turn to a few suggestions.

First. The social sciences are engaged in developing a process of "social discovery," and every experiment helps to shape this process. Every one who has had a part in this minimum wage experiment has gained in understanding of social problems and their solution, those administering the law, those participating in the conferences, those testifying, even the public looking on. The experiment has been well worth while for the experience it has given in the application of social and economic theory to practical life and for the

clearer understanding gained of the difficulties involved in the process of "social discovery". Such experiments, even though interrupted by adverse court decisions, make a vital contribution to the development of our procedure.

Second. The value of our educational processes, our sciences, our social experiments, is to be measured by the improvements in human behavior which eventuate. Such an experiment as this which Oregon has tried cannot be regarded as sterile if higher types of human behavior have resulted. The author is very much convinced that even if nothing further were ever done in Oregon with minimum wage legislation the brief trial already given has led to more tolerant and sympathetic treatment of labor. The new attitudes taken by employers, the unanimity arrived at in the conferences and public hearings, the improvements in conditions made by business men upon their own initiative, the voluntary continuance of the legislation in spite of the adverse court decision, all point to a distinct improvement in the way men act. The United States Supreme Court could cancel the constitutionality of the law but its decision did not cancel the gains in human behavior.

Third. Is it possible that in the future the minimum wage principle might be applied to men in industry as well as to women? While much of the emotional appeal in behalf of the legislation in the United States has been based upon the fact that it was designed to aid women, whose health and welfare were regarded as peculiarly vital to society, the methods actually used and the arguments advanced have rested upon a different foundation, namely, the fact that the ones to be aided were inexperienced, poorly paid and unorganized. Almost every argument as to the justice of the legislation is equally applicable to men in the lower brackets of pay. The advantages gained in improved working conditions and in efficiency would not be confined to women but

would appear also if the law were applied to men as well, for they arise not because the legislation aids women but because it aids inexperienced, low-paid workers. Perhaps it was the consciousness of the potential application of the principle to men as well as to women that led the Court to rule adversely. It is significant that in its argument on the specific point of wage-fixing the Court speaks in general terms and not just about women.

In yet one other way the Minimum Wage Law is of vital moment to men in industry. The writer is convinced that even though the law is applicable exclusively to women it not only has had but will continue to have a large influence over the industrial conditions of men. The improvements in human behavior which have resulted find their way into the dealings of employers with men also. The keener sense of justice and fair-play aroused, the higher plane of competition inaugurated and the more sympathetic understanding engendered cannot fail to encompass the dealings of employers with men as well as with women. Then, too, there is often a very direct gain for men out of the Minimum Wage Law as applied to women only. The law requires through the rulings of the Industrial Welfare Commission good sanitary conditions for women. Every man at work in the plant is the gainer also. Hop yards, orchards and berry fields employing women must make every possible provision for cleanliness, good drinking water, garbage removal and adequate toilet facilities. Every man at work in the industry finds conditions better also. The improvements designed for women inevitably raise the standards of conditions under which men work. A very good case can even be advanced that better bargaining methods and higher wages for women raise the whole plane of competition and have some lifting power upon the wages of men in the lower levels of pay.

Fourth. The discussion of the minimum wage laws and

the experience with them is gradually clarifying a point upon which there has been much confusion. Throughout the experiment emphasis has been placed upon the *minimum*. At first there was little distinction drawn between a minimum wage and a standard wage. Even the District of Columbia Court in its decision and to a certain extent the United States Supreme Court in its opinion seem to have given the distinction slight consideration, if any. The administration of the law, however, involving as it does the application of social and economic theory to a concrete situation, has developed a clear distinction between the worker at the minimum and the worker above the minimum. The perception of the fact that it is the worker at the minimum with whom the law is dealing brings the adoption of more suitable and effective measures, less likely to merit the objections of critics. The issues are clarified.

Fifth. Among the suggestions which have forced themselves forward during this study, especially in those portions which dealt with the methods and achievements of the conferences and public hearings and with the attitudes of employers and employees toward each other, is the possibility that the experiment may make a vital contribution to the development of a larger measure of "industrial democracy". Collective bargaining has been introduced where few have ever conceived of using it before. To the methods of bargaining used by labor organizations is added a method without which workers at the lower levels might never have been reached. Further, in the processes involved in minimum wage laws the public has a distinct place, an extremely important development if true industrial democracy is to evolve.

Finally, in spite of the adverse decision of the United States Supreme Court upon minimum wage legislation, Oregon retains the foundation for progressive labor legislation. Though it is now unconstitutional to set minimum

wages for adult women employees, it is still constitutional to have an Industrial Welfare Commission, to regulate hours, to establish standards of working conditions, to require time and one-half for overtime, to control the conditions of work of minors and even to control the wages of minors. The Industrial Welfare Commission still has authority to inspect factories, stores, orchards and yards and can still examine the payrolls of employers and collect all types of data. Here are ample tasks of significant character to give vitality to the work of an Industrial Welfare Commission, even though it cannot for the time being legally make binding determinations as to the wages of adult women. The Court decision interrupted legally enforceable wage decrees but the Commission and many of its major tasks go on. As previously pointed out, the real success of the legislation in the past, even in establishing the minimum wages, did not rest upon the power of prosecution, but upon the good sense, skill and diplomacy of the Commission in dealing with the parties concerned. The vitality of the law in this respect continues.

One other phase of this final suggestion remains to be mentioned. Was the adverse decision of the United States Supreme Court a part of the reactionary spirit prevalent in the early post-war years? If so, then the social and economic philosophy of the Court may change its complexion again, under the influence of the revival of liberal views. Should this happen, Oregon has the nucleus for further development of the minimum wage principle. She has retained the foundations for the functioning of progressive legislation.

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